

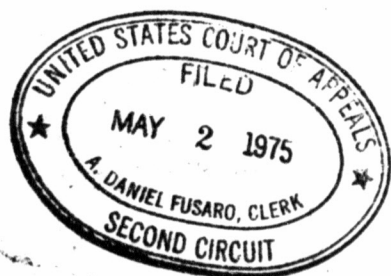
***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
BRIEF**

74-2639 B
J 2014-2464

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SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, NEW YORK 10007

TELEPHONE CORTLANDT 7-4580

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United States of America

vs.

74 Cr. 159

Philip Stoller and Martin Frank

New York, New York.

October 1, 1974- 9:30 A.M.

(Trial resumed.)

(In open court; jury absent.)

THE COURT: If we can get settled here and take up some unfinished business.

First of all, at the request of Mr. Edwards and Mr. Sorkin, I reflected on the Government's reargument of the Court's decision to exclude the Frank overhear tapes and transcripts. I must say that my sleeping on the issue has only confirmed my conclusion that if this Court were to admit those tapes it would be reversible error in the event there was any conviction of the defendant Frank in regard to the main indictment counts.

I am sorry to say, but once again, Mr. Sorkin, for the benefit of you and Mr. Edwards, I will summarize my reason.

As I have told you and him at least four times this case is not on all fours with Massiah. I quite agree with

the government on that.

It is also true that Federal Courts, most particularly our own Circuit Court, have in my judgment wisely carved out certain exceptions to Massiah which as a total rule of thumb would be ridiculous and awkward. Such cases as United States versus Garcia are good examples of that in this Circuit.

On the other hand, that exception does not give the Government a blanket license to simply obtain an obstruction of justice indictment after the main indictment and without more expect to get evidence of this kind into the record.

I am fortified by that conclusion by the fact, which is conceded by the Government, that once they knew that the defendant Allen claimed he was offered an affidavit which is alleged to be false and exculpatory and false in that regard of the defendant Frank, they had the basic elements of the charge.

Arming an unlettered cooperating defendant with a Kel device to go in and make discreet inquiries limited only to the purported perjurious affidavit, in my judgment is nothing but a subterfuge, even though I don't mean to accuse the Government of intending it that way. I have no basis to say that. In effect it was nothing but a subter-

1 fuge. That conclusion is fortified when one listens to
2 the tape and reads the transcript. Except for a few words
3 or sentences about the affidavit most of the tape is
4 devoted to admission by the defendant Frank having to do with
5 the substantive and conspiracy count in the main indictment.
6 I know myself that would indicate clear guilty knowledge
7 upon the part of the defendant. I can't deny that.
8

9 But I don't think that is the test of admissibility.
10 Therefore, I adhere to the rule and I don't intend to summar-
11 ize my reasons again. I think this is now the third time.
12 I am sorry, but that is the way my slumbers last night bring
13 it to me.

14 Now, Mr. Sorkin, we must know at long last does the
15 Government intend to offer any more witnesses?

16 MR.SORKIN: Yes, your Honor, we have three more
17 matters. Mr. Feldshuh and Mr. Gould and I --

18 THE COURT: All I want to know is if you have
19 additional evidence to bring to the jury's attention.

20 MR. SORKIN: We do. Maybe we can even eliminate
21 this witness if you give me one more minute with Mr. Feldshuh
22 and Mr. Gould and we can do it with three stipulations.

23 THE COURT: All right.

24 (Pause.)

25 MR. SORKIN: Your Honor, we have decided that

on 80A we would excise the three photostat cards, Alfred P. Herbert, Ernest Ballmer, and Philip Stoller & Company, Inc. We have stapled them onto a legal yellow pad and that is satisfactory to Mr. Gould and Mr. Feldshuh and we intend to offer that when the jury comes in.

The second thing, your Honor, we have entered into a stipulation with Mr. Feldshuh with respect to Mr. Frank's passport.

I will let Mr. Feldshuh tell you.

MR. FELDSHUH: Number 1, your Honor, we stipulate that this passport is the passport of the defendant Frank.

Number 2, that this passport was turned over to the Government at an arraignment hearing pursuant to the order and direction of the Court.

Number 3, as a condition of bail, your Honor.

THE COURT: Just a minute, gentlemen. This isn't a stipulation. This is a wrangle. I am not interested in this. If the Government wants to prove something why don't you prove it. I don't want to listen to all this.

MR. SORKIN: I tried, your Honor. All I want to show is in his passport on December 13 --

THE COURT: If we are going to have a wrangle that is not an agreement in my view. We are drifting on in this case with all these things. I know you are trying to

1 qb-5
2 save some time. But Mr. Feldshuh wants to wrangle. I
3 don't want to listen to any more wrangles. I am tired of
4 putting upon a jury like we always do in our profession.
5 If you want to prove something and he doesn't agree to it
6 bet's put on a witness. I am not interested in all this
7 wrangle.

8 MR. SORKIN: The witness would say that he turned
9 over the passport to me, which he stipulates to and all
10 we want to show is that on December 13, 1972, he was in
11 Zurich airport.

12 MR. FELDSHUH: There is a stamp on there which
13 says Switzerland, December 13, '74.

14 THE COURT: Whatever the Government says it says.
15 You gentlemen would argue if you looked at the clock now.
16 I am not interested in that kind of thing, it is unprofession-
17 al. I don't know what you are talking about, Mr. Feldshuh.
18 If you don't agree with him, you don't agree with him. I
19 can't hit you over the head no matter how much I might want
20 to. It seems to me fatuous to have these discussions. You
21 sound like a bunch of delinquent children when you talk this
22 way, and it is not very helpful.

23 MR. SORKIN: The third thing is that if ARthur
24 Zapolski were called he would testify as to certain transfer
25 records and we have agreed to that.

THE COURT: Arthur whom?

MR. SORKIN: Zapolski.

THE COURT: Who is ARthur Zapolski?

MR. SORKIN: He is a supervisor at the transfer department of Irving Trust, and that on April 25, 14,900 shares were canceled in the names of 15 people who the Court has heard about and new certificates were issued in 100 share certificates in the name of Emanuel Deetjen & Company. That is it, and then we would rest after that, your Honor.

MR. GOULD: May I make a suggestion about the last proposed sheet.

If your Honor please, the Government has produced what is clearly an original record from the Irving Trust Company, which was the transfer agent of Training With the Pros. The transfer sheet discloses that the 14,000 or 15,000 shares, 14,009, which were purchased by those so-called nominees were eventually transferred to Emanuel Deetjen & Company.

I would have no objection whatever if this page were marked, received as an exhibit without the necessity of calling the witness and the Government can argue from it as it pleases that the shares were eventually received by the transfer agent and were on or about April 25, 1969, transferred into the name of Emanuel Deetjen & Company.

1
2 And they got 100 share certificates.

3 I am prepared to stipulate to that. They can
4 argue anything they want from it.

5 THE COURT: How about you, Mr. Feldshuh?

6 MR. FELDSHUH: Yes, I will stipulate to that.

7 THE COURT: Now before the jury comes in, I would
8 like to know in advance what you gentlemen would suggest
9 so far as continuing throughout the day. I believe since
10 the Government was unwilling to tell the defense or the Court
11 what their plans were last night, that I don't wish to force
12 anybody's hand, most particularly the defendants, in going
13 forward, for obvious reasons.

14 On the other hand, I submit to you that if you
15 prefer to do that we certainly can.

16 End 1A
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2 MR. GOULD: If your Honor please, I would like
3 to suggest that after the Government rests we take a
4 little time to argue the motions to dismiss which will be
5 longer. It can't be done in 15, 20 minutes, I am sure.
6 We do not have any witnesses who are readily available for
7 today. I couldn't get them at the earliest late in the
8 afternoon because we couldn't make any arrangements for
9 them.

10 I would respectfully ask that we go over to
11 Monday morning when the Court will return.

12 THE COURT: I can't quarrel with that at all,
13 given what happened yesterday. I am sure Mr. Sorkin
14 understands that. But I don't want this jury sitting around
15 and I am sorry that we had to go to this additional trouble
16 by having them come in.

17 Perhaps under all of the circumstances it is just
18 as well.

19 We have one juror missing.

20 Gentlemen, the jury is about to come in. I
21 don't want any more squabbles at this time.

22 (In open court, jury present.)

23 THE COURT: Good morning, Mrs. DeBartola, and
24 ladies and gentlemen.

25 Mr. Sorkin.

1 jorf 2

2 MR. SORKIN: May I proceed?

3 THE COURT: Yes.

4 MR. SORKIN: Your Honor, at this time we reoffer
5 in evidence 80-A pursuant to discussions with the Court
6 and counsel for the defendants having excised certain
7 documents.

8 THE COURT: Have you gentlemen at the back table
9 looked this over?

10 MR. GOULD: I have no objection to that.

11 MR. FELDSHUH: No objection, your Honor.

12 (Government's Exhibit 80-A received in
13 evidence.)

xx

14 MR. SORKIN: At this time I will pass this around
15 to the jury, your Honor.

16 May we have this marked please.

17 (Government's Exhibit 108 marked for
18 identification.)

xx

19 MR. SORKIN: Counsel for the Government and
20 the defendants have stipulated to Government's Exhibit 108.
21 Mr. Feldshuh will read the stipulation before the jury.

22 MR. FELDSHUH: Your Honor, we will stipulate
23 that this is the passport of the Defendant Martin Frank;
24 that this passport bears, on page 7 thereof, a stamp which
25 reads as follows:

1 jqrf 3

2 "Schweiz 13 December 72, Zurich, Phluga Harbor."

3 We will stipulate that the translation of that
4 is Switzerland, 13 December 72, Zurich Airport. We make
5 these stipulations without conceding the competency, mater-
6 iality of Government's Exhibit 108 for identification.

7 THE COURT: You mean materiality. Nobody questions
8 that this is a competent document, I assume. You and I
9 must use the word competency differently.

10 MR. FELDSHUH: We propose to submit to your
11 Honor the question of its competence by reason of the manner
12 in which it was obtained.

13 THE COURT: We have been through that, Mr.
14 Feldshuh. That is Mr. Frank's passport. You don't deny
15 that.

16 MR. FELDSHUH: I don't. I conceded that.

17 THE COURT: The only issue I can see your raising
18 is materiality.

19 MR. FELDSHUH: I am also raising the issue as to
20 the manner in which it was obtained and I say that makes
21 it not competent under those circumstances.

22 THE COURT: I flatly disagree and so rule.

23 I also disagree with you most respectfully on the
24 issue of relevance. It is relevant.

25 MR. FELDSHUH: I have made it for the record.

1 jarf 4

2 MR. SORKIN: We offer in evidence page 7 of
3 Government's Exhibit 108.

4 THE COURT: That will be received as to page 7.

5 MR. SORKIN: Everything that is stamped in red.

6 MR. GOULD: Would it not be best if somebody
7 photostated that or Xeroxed that and gave them that page?

8 MR. SORKIN: We can do that, your Honor.

9 THE COURT: I think that is perfectly clear
10 and it is clear whose passport it is.

11 (Government's Exhibit 108 received in
12 evidence.)
xx

13 MR. SORKIN: May we have this marked Government's
14 Exhibit 109, please.

15 (Government's Exhibit 109 marked for
16 identification.)
xx

17 MR. SORKIN: Your Honor, we have agreed to a
18 stipulation, defense counsel and the Government, that if
19 Arthur Zapolski were called he would testify that
20 Government's Exhibit 109 are the original transfer records
21 of the Irving Trust Company which are kept in the ordinary
22 course of business and which are made in the ordinary
23 course of business and that as reflected on Government's
24 Exhibit 109, a two-page document, 04/25/69, April 25,
25 1969, 14,900 shares registered as follows:

1 jgrf 5

2 Warren Bundy, 1,000 shares. Paul Strauch,
3 1,000 shares. Kathryn Osborn, 1,000 shares. Janice
4 Hickok, 1,000 shares. Ruth Pollin, 1,000 shares. Mildred
5 Stoller, 1,000 shares. Delore Abramson, 1,000 shares.
6 Sarah Striziver, 1,000 shares. Joseph Arden, 1,000 shares.
7 Herman Talansky, 1,000 shares. Willard J. LaMorte,
8 one certificate for 300 and one certificate for 700 for
9 1,000 shares. Ruth Recca, 1,000 shares. Jerome Robert
10 Allen, 1,000 shares. William Brief, 1,000 shares. Kathleen
11 Howe, 900 shares.

12 That on that date those shares came into the Irving
13 Trust Company, were cancelled and 14,900 shares were
14 issued in the name of Emanuel Deetjen & Company in 100
15 share certificates.

16 We offer 109 in evidence, your Honor.

17 MR. GOULD: No objection.

18 MR. FELDSHUH: No objection.

19 (Government's Exhibit 109 received in
20 evidence.)

21 MR. SORKIN: Your Honor, the Government rests.

22 THE COURT: Mrs. DeBartoa and ladies and
23 gentlemen, as you just heard, the prosecution has rested
24 its case in chief. In anticipation of this result late
25 last evening and earlier this morning before you came in we

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1 jarf 6

2 were trying to plan for the future here. In that regard
3 based on the information which counsel have furnished me
4 I am going to excuse you now to go about your business,
5 go home or whatever you want to do. The reasons for this
6 briefly are as follows:

7 First of all, at this stage of the case we have
8 certain motions and other matters which must be heard.

9 Second of all, the defendants intend to offer some
10 witnesses. Because of the fact that they weren't certain,
11 as none of us were, just exactly when the Government would
12 rest, they are unable to produce those witnesses here
13 today.

14 Third of all, there are other complications involv-
15 ing my own schedule as you know. Later this week I have
16 other matters to do. In balancing all these things we
17 have agreed that we will adjourn the case until next
18 Monday at 9:30 o'clock. We haven't done very well
19 with these 9:30 starts. For those of you who have difficulty
20 getting in here before a quarter of or so I would ask you
21 most earnestly to start a little earlier next Monday.

22 Once again I ask you to put the case out of
23 your minds. The case isn't over and we haven't heard from
24 the defense witnesses, whoever they may be. Let me give
25 you an estimate of our time. In conferring late

1 jqrfr 7

2 last evening after you left with the lawyers it would
3 appear that there is a fair chance that we would finish
4 the case perhaps next week. There is no certainty in
5 this business but there appears to be a fair and reasonable
6 chance that the proof wouldn't take maybe two or three days.
7 That is our best estimate at the moment.

8 If anything changes on that I will do my best to
9 keep you advised so you know where you are going. I am
10 sorry I couldn't warn you of this in advance but I didn't
11 know about it until frankly a few moments ago for certain
12 when the Government and defense lawyers came in and told
13 me what was their plans in the light of this day, October
14 1, 1974.

15 So without any further ado let me not hold you
16 up. You are excused to go about your own business. 9:30,
17 same room, next Monday.

18 Good day.

19 (Jury leaves courtroom.)

20 THE COURT: Gentlemen, we will take a short
21 recess and then we will get to our business at hand.
22 We will take a five minute recess.

23 (Recess.)
24
25

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2 MR. GOULD: If your Honor please, before we
3 argue the motions, we have subpoenaed the Marshal's office
4 and I understand that the gentlemen from the Marshal's office
5 are here in response to the subpoena, although they do not
6 have yet the materials that we wanted them to bring. May
7 I respectfully ask that the Court simply ask them to
8 return on Monday morning with the materials which they say
9 will be available then.

10 THE COURT: Yes. I don't see --

11 MR. GOULD: These gentlemen here (indicating).

12 THE COURT: Good morning, Marshal.

13 Counsel has just advised that he would be very
14 happy if you would produce the information Monday morning
15 which will be the 7th, I guess, of October in this room
16 at 9:30. Would that be all right?

17 THE MARSHAL: Sure enough, Judge.

18 THE COURT: Thank you.

19 MR. GOULD: Thank you, your Honor. Shall we
20 proceed, your Honor?

21 THE COURT: Yes, indeed.

22 MR. SORKIN: Your Honor, I'm handing up at this
23 time after we rested the Government's reply to a motion to
24 dismiss on the grounds of pre-indictment delay. I have served
25 defense counsel and I am handing up a copy of the Government's
memorandum of law and I will have an affidavit to accompany

1 that as soon as I get downstairs to the steno pool where
2 it is being prepared (handing).

3
4 THE COURT: Messrs. Gould and Feldshuh, whatever
5 order you gentlemen select is all right with me, but I
6 would like to make one exception. I would like to hear
7 you on your motion to dismiss for pre-indictment delay.

8 As you remember, and as you yourself fairly put
9 it, you filed your motion prior to trial, but frankly
10 recognize that under prevailing law the Court would have to
11 wait at least until this point before seriously considering
12 it.

13 MR. GOULD: All right. That would be manifest
14 from the Government's proof, whether it was prejudicial
15 or not.

16 I would like to make this suggestion. Perhaps
17 that would suit your Honor's convenience.

18 I would like to argue first, and I will yield
19 to Mr. Feldshuh if he wants to argue it -- I would like to
20 argue the pre-indictment delay application first and then I
21 would like to address myself to the false statement
22 counts, Counts 11 through 16, and then I would like to
23 address myself to the so-called obstruction of justice
24 counts, Counts 1 through 3 of the second indictment, and then
25 deal finally with the stock fraud, mail fraud counts.

Would that order disturb your Honor?

THE COURT: Not at all.

MR. FELDSHUB: I have no objection, your Honor.

MR. GOULD: Thank you.

One sort of housekeeping thing. There is an indictment, your Honor will recall, 73 Criminal 1050, which is the original false statements, and I think the Government at this point should probably consent to the dismissal of that indictment.

THE COURT: I'm not so sure they will.

Does the Government consent to dismissal of the old indictment, Mr. Sorkin?

MR. SORKIN: Not at this time we don't, your Honor.

THE COURT: I will deny that motion without prejudice to renewal, however, if the Government doesn't either nolle the old indictment or suffer a dismissal in open court at an appropriate time soon after we finish this trial.

MR. GOULD: I will renew the motion at the close of the entire case. Hopefully by that time they will understand what I am trying to get at.

Now, your Honor, with respect to the delay, motion to dismiss. Your Honor will recall that the motion papers were filed. We presented a memorandum to the

Court at that time.

I think I can urge with conscientious vigor that the Government's evidence now demonstrates the prejudicial burden which has been placed on the defendants by the delay in this case. I need not expand on the international problems which attend the reconstruction of events which took place in the years 1968 and '69.

It is always difficult after the passage of such an interval of time for the defendants to attempt on an evidentiary basis to reconstruct what happened that long ago.

Now, if we go through the record in this case, and I don't propose to rehearse every bit and piece that I think fortifies my conclusion, over and over again witnesses had difficulty in placing alleged events as to their time, as to the place where they occur.

D'Onofrio referring to meetings and conversations usually stating what season. Infrequently he was able to get it down to a month. I can't remember that he was ever able to give us any precision as to dates.

I remember the witness Schneiderman who testified to a very important conversation which he allegedly had with Stoller. After the passage of time he is even unable to tell us whether it was a personal meeting or

a telephone conversation.

You could go through the record here and do the usual kind of nitpicking and say, well, maybe if we tried this case two or three years after the events he would be able to say this and he would be able to say that.

I don't propose to do it because I think there is available to us a massive demonstration of the prejudicial impact on these defendants of the elapse of time, and that is the absence of the witness Moss.

Moss is dead. Your Honor will recall when we made the motion one of the principal grounds on which we based it was the death of Mr. Moss.

Now, we have available to us for consideration certainly on a motion of this kind the SEC testimony of Mr. Moss. Portions of it are reproduced in the motion papers. The whole transcript is here and we can read it.

Well, we look at it.

Moss in his SEC testimony under oath categorically refuted some of the most important contentions which were advanced by the Witness D'Onofrio.

For example, Moss was asked whether he had ever discussed -- this is from his transcript, pages 9 and 10, the SEC transcript -- Moss was asked whether he ever discussed the proposed public offering with D'Onofrio

prior to the effective date of the offering.

He said, no.

I need hardly point out to the Court what would be the benefit to the defendants in this case on the conspiracy count and on the substantive security counts if we could put Moss on the stand for the defense and have him say, no, that is a lie, I never talked to this man until it was effective.

It would be one of the most compelling pieces of refutation of the whole structure of the Government's case, but he isn't here, he is gone.

1 gab-1
2 It is to be expected when the Government waits
3 as long as the Government did here, witnesses will be gone.
4 Now, this is not a case, your Honor, where the facts only
5 came to the attention of the Government recently. This is
6 a case which was the subject of a full investigation by
7 the Securities and Exchange Commission in the spring of 1969,
8 and that is on the record.

9 We had Mr. Rashes here. He described it. We
10 have the testimony.

11 The indictment here, the conspiracy count, says
12 Moss was a conspirator.

13 D'Onofriot says, attempted to say it was part
14 of the conspiracy that the conspirator would cause the price
15 of the Training With the Pros stock to increase, to rise,
16 to go up by inducing brokers to recommend its purchase.

17 We read the SEC testimony of Mr. Moss, tragically
18 absent from this trial.

19 Moss says that the rise in the price of the stock
20 in 1969 was attributable to certain potentially lucrative
21 contracts between Training With the Pros and several major
22 industrial corporations. He refers to the publicity
23 that had been given in various journals and trade publications.

24 I direct the Court's attention on that point to
25 the testimony of Mr. Moss which appears in his SEC transcript

1 gab-2

2 at Pages 36 and 37. He was asked, "Can you give me any
3 reason for the stock going to this price?"

4 His answer, Page 37 of his transcript: "The pub-
5 licity about the contracts would establish well-know
6 respectable, formidable industrial companies."

7 Again, suppose -- here is the Government in here
8 and they say this stock went from 7 to almost 70 because of
9 the machinations of the defendants, the conspirators.

10 Need I explain to the Court the enormous advantage
11 that would accrue to the defense were we able to put a Moss
12 on the stand to explain what was going on in the company
13 at that time and to give substantially the same explanation
14 he gave to the Securities and Exchange Commission when they
15 investigated the matter and, correlatively, need I explain
16 to the Court the prejudice to the defendants when a Moss
17 is not available to give that --

18 THE COURT: Let me ask you something, Mr. Gould.

19 MR. GOULD: Yes, sir.

20 THE COURT: This reliance on Moss seems to me to be
21 a two-edged sword from Stoller's point of view.

22 There is evidence in this case that the defendants
23 here on trial well knew that the SEC was inquiring of Moss,
24 and I would be astonished if they didn't know. So I think
25 that evidence is pretty persuasive.

1 gab-3

2 Now, Moss didn't die until a couple of months
3 ago. Passing what I consider to be a very particular
4 transcript of his testimony, which leads me to believe that
5 he may not have been credible and in many cases he was
6 distressingly vague at the very least, I don't know why
7 the defendants couldn't have questioned him.

8 MR. GOULD: We did question him. We couldn't bring
9 him into the courtroom. We didn't have a courtroom to bring
10 him into. We didn't know he was going to be dead.

11 THE COURT: The rules say you can depose a witness.
12 Maybe you didn't know he was going to die.

13 MR. GOULD: I can only tell your Honor --

14 THE COURT: Then the Government is going to say
15 we didn't know he was going to die either.

16 MR. GOULD: We didn't wait. We didn't wait to
17 get an indictment here.

18 The man was extremely ill for a number of months
19 before he died. There was no method known to man by which
20 we could have gotten his testimony and preserved it.

21 THE COURT: I am not sure that is really a matter
22 of record.

23 First of all, the original indictment here was
24 filed last fall.

25 MR. GOULD: That is right.

1 gab-4

2 THE COURT: Then we had the superseder and the
3 main indictment which came in --

4 MR. FELDSHUB: February 14, your Honor.

5 THE COURT: -- in February. Of course, I don't
6 know the details about Moss at all.

7 There is nothing in your papers which would
8 indicate conclusively that he was unavailable to the defense.

9 MR. GOULD: Your Honor, suppose he were available.
10 Suppose I sat here now with a full affidavit from Moss as to
11 what happened. What good would it do me? I can't bring
12 him into this trial.

13 THE COURT: You could have examined him.

14 MR. GOULD: With what purpose? We don't have
15 examinations before trial, depositions.

16 This man was fatally ill for many months before he
17 died. He died in July.

18 MR. SORKIN: July 2nd.

19 MR. GOULD: He died July 2nd.

20 THE COURT: Under certain circumstances you can
21 get depositions in criminal cases.

22 MR. GOULD: There was no way to depose this man
23 for months prior to his death.

24 THE COURT: Maybe so. I can't quarrel with you.
25 There is nothing in the record that points this up one way --

1 gab-5

2 MR. GOULD: How could there be? We have given you
3 in our motions what the facts are.

4 THE COURT: I don't know the facts of his illness.
5 You just say he died.

6 MR. GOULD: It is in there. It is in the affi-
7 davit.

8 THE COURT: Your affidavit doesn't say anything
9 about that except he died.

10 MR. GOULD: Yes. Suppose that the man were in
11 perfect health up to the date of his death. We are still
12 prejudiced by his absence here. Everybody is going to die
13 some day, and the mere fact that the Government waits and
14 waits and waits with a case that they have got on the back
15 burner for years results in prejudice to defendants. That
16 is all anybody can say about that. I didn't make this
17 up. There is a policy, there is a reason for Government
18 to proceed with expedition and dispatch in these criminal
19 cases.

20 THE COURT: Well, I suggest to you that this doesn't
21 impress much because surely there is an obligation, but that
22 doesn't mean every indictment has to be filed as soon as
23 defendants think it should be.

24 End 2B

25

2 MR. GOULD: I am not suggesting that, your Honor.
3 I am not suggesting that as a strict technical matter the
4 Government is not within its rights in filing an indictment
5 at 11:59 on the day before the statute of limitations ex-
6 pires.

7 That is the law. I have to accept that and I
8 can't quarrel with it. But there is a difference. When we
9 see that almost immediately after the public offering of
10 this security the Government undertook an investigation --

11 THE COURT: But Rashes has been here. He is no
12 criminal investigator. He is only looking into the Reg. A
13 offering.

14 MR. GOULD: I respectfully differ.

15 THE COURT: Your argument seems to be based on
16 two propositions. One, a couple of days after Moss was
17 deposed on May 27, 1969, the Government should have filed an
18 indictment. Two, that Moss was going to be a key defense
19 witness to contradict D'Onofrio and Bonavia and all these
20 people. That just doesn't wash.

21 MR. GOULD: Let me see, your Honor. First of
22 all I very respectfully differ with your Honor that I have
23 ever suggested that a couple of days after Mr. Moss testified--

24 THE COURT: All right.

25 MR. GOULD: I think that is unfair to my argument.

1 qb-2

2 THE COURT: I will accept that literally it is.
3 You know what I am trying to say. I am trying to say
4 that apparently the assumption is reading your papers that
5 because Moss was deposed way back there in terms of
6 deciding whether or not to remove the Reg. A exemption from
7 these people that somehow the indictment should have been
8 returned years before it was.

9 MR. GOULD: Yes, I think it should have been.
10 First of all, I must differ with another assumption that
11 your Honor made. That is that when Mr. Rashes was investigat-
12 ing this matter he was simply investigating the propriety of
13 a Reg. A offering.

14 With all respects, I think your Honor is in
15 error on that. First of all, Rashes has nothing to do with
16 Reg. A offering. Rashes by his own testimony was then connecte
17 with the enforcement branch of the Securities and Exchange
18 Commission.

19 THE COURT: Wait a minute. That isn't what he
20 said. I will read his testimony. But be that as it may, he
21 wasn't looking at this as a stock fraud case.

22 MR. GOULD: Yes, he was. Look at the warning he
23 gave to the people.

24 THE COURT: They always do that.

25 MR. GOULD: The precise statutes we are dealing

1 with here.

2
3 THE COURT: He recognized as a Commission lawyer
4 it could be.

5 MR. GOULD: Your Honor, you have only to examine
6 the private file of the Securities and Exchange Commission,
7 and I have never seen it, but I guarantee to you, and it is
8 sitting here somewhere, I guarantee to you that the private
9 file contains documentary proof that at the time of the
10 examination Moss, of Stoller and of any other witness in
11 this case the Government was concerned with a charge of
12 manipulation. I will stake my license on it.

13 THE COURT: I would have to accept that that is
14 a real possibility.

15 MR. GOULD: We can dispose of it in a moment.

16 THE COURT: You know and I know and Rashes has
17 told us, and I have no reason to disbelieve him, the only
18 result he knows of his investigation is that the Reg. A
19 exemption was removed.

20 MR. GOULD: That was later, your Honor, as a result
21 of a deal on a civil proceeding.

22 THE COURT: Fine, but that is all he knew about
23 it.

24 MR. GOULD: That is not all he knew. That was
25 a negotiated arrangement of which I have made hundreds in

my life with the SEC.

THE COURT: That is now what I understood him to say. I also agree with you, however, that generally speaking these people would have been out of their minds if they didn't listen to somebody like Stoller and Moss and begin to think, Well, maybe there was a manipulation here."

MR. GOULD: I will stake my right to practice before this Court on the proposition that after listening to those people they reached the conclusion that there was no evidence of a manipulation because, as Mr. Rashes testified, in the year 1969 what happened to the market price of Trading With the Pros had happened to hundreds of securities, none of which were the subject of manipulation.

But we wonder. From my point, the only thing I am urging to your Honor is that we are prejudiced by the absence of Moss and that the Government having taken all these years comes along now at a point when we are prejudiced. What in heaven's name would we have done?

THE COURT: What do you think Moss would do for the defense?

MR. GOULD: I know what he would do because I have read his sworn testimony. He would come in here and say "D'Onofrio was a liar, we never had any such conversations."

THE COURT: Well, maybe.

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2 MR. GOULD: Not maybe. He says so in his sworn
3 testimony.

4 THE COURT: I know.

5 MR. GOULD: Unless they could get him to come
6 in here as they have other witnesses who happen to be under
7 indictment in other cases or convicted in other cases and say,
8 "I have lied when I said so."

9 THE COURT: You want this Court to draw the infer-
10 ence that everything Moss says was truthful and everything
11 everybody else said is not truthful. I can't do that.

12 MR. GOULD: It is for a jury to determine.

13 THE COURT: The jury is not going to decide
14 this motion.

15 MR. GOULD: But the prejudice to the defendant
16 results from the absence of Moss. You can no more, your
17 Honor, assume that Moss would have recanted in this court-
18 room than I can assume that he would have been indicted in
19 other cases.

20 THE COURT: You can't have it both ways.

21 MR. GOULD: I don't want it both ways.

22 THE COURT: You certainly do. You know what this
23 sounds like to me -- and this is simplistic and I don't
24 mean to be critical, but this sounds like an argument that if
25 you read that little Illinois hick's testimony, Bonavia,

Would that order disturb your Honor?

THE COURT: Not at all.

MR. FELDSHUE: I have no objection, your Honor.

MR. GOULD: Thank you.

One sort of housekeeping thing. There is an indictment, your Honor will recall, 73 Criminal 1050, which is the original false statements, and I think the Government at this point should probably consent to the dismissal of that indictment.

THE COURT: I'm not so sure they will.

Does the Government consent to dismissal of the old indictment, Mr. Sorkin?

MR. SORKIN: Not at this time we don't, your Honor.

THE COURT: I will deny that motion without prejudice to renewal, however, if the Government doesn't either nolle the old indictment or suffer a dismissal in open court at an appropriate time soon after we finish this trial.

MR. GOULD: I will renew the motion at the close of the entire case. Hopefully by that time they will understand what I am trying to get at.

Now, your Honor, with respect to the delay, motion to dismiss. Your Honor will recall that the motion papers were filed. We presented a memorandum to the

Court at that time.

I think I can urge with conscientious vigor that the Government's evidence now demonstrates the prejudicial burden which has been placed on the defendants by the delay in this case. I need not expand on the international problems which attend the reconstruction of events which took place in the years 1968 and '69.

It is always difficult after the passage of such an interval of time for the defendants to attempt on an evidentiary basis to reconstruct what happened that long ago.

Now, if we go through the record in this case, and I don't propose to rehearse every bit and piece that I think fortifies my conclusion, over and over again witnesses had difficulty in placing alleged events as to their time, as to the place where they occur.

D'Onofrio referring to meetings and conversations usually stating what season. Infrequently he was able to get it down to a month. I can't remember that he was ever able to give us any precision as to dates.

I remember the witness Schneiderman who testified to a very important conversation which he allegedly had with Stoller. After the passage of time he is even unable to tell us whether it was a personal meeting or

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2 a telephone conversation.

3 You could go through the record here and do
4 the usual kind of nitpicking and say, well, maybe if we tried
5 this case two or three years after the events he would
6 be able to say this and he would be able to say that.

7 I don't propose to do it because I think there is
8 available to us a massive demonstration of the prejudicial
9 impact on these defendants of the elapse of time, and
10 that is the absence of the witness Moss.

11 Moss is dead. Your Honor will recall when we made
12 the motion one of the principal grounds on which we based
13 it was the death of Mr. Moss.

14 Now, we have available to us for consideration
15 certainly on a motion of this kind the SEC testimony of
16 Mr. Moss. Portions of it are reproduced in the motion
17 papers. The whole transcript is here and we can read it.

18 Well, we look at it.

19 Moss in his SEC testimony under oath categorically
20 refuted some of the most important contentions which were
21 advanced by the Witness D'Onofrio.

22 For example, Moss was asked whether he had ever
23 discussed -- this -- from his transcript, pages 9 and
24 10, the SEC transcript -- Moss was asked whether he ever
25 discussed the proposed public offering with D'Onofrio

1 prior to the effective date of the offering.

2 He said, no.

3 I need hardly point out to the Court what would
4 be the benefit to the defendants in this case on the
5 conspiracy count and on the substantive security counts if
6 we could put Moss on the stand for the defense and have
7 him say, no, that is a lie, I never talked to this man until
8 it was effective.
9

10 It would be one of the most compelling
11 pieces of refutation of the whole structure of the Govern-
12 ment's case, but he isn't here, he is gone.
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1 gab-1
2 It is to be expected when the Government waits
3 as long as the Government did here, witnesses will be gone.
4 Now, this is not a case, your Honor, where the facts only
5 came to the attention of the Government recently. This is
6 a case which was the subject of a full investigation by
7 the Securities and Exchange Commission in the spring of 1969,
8 and that is on the record.

9 We had Mr. Rashes here. He described it. We
10 have the testimony.

11 The indictment here, the conspiracy count, says
12 Moss was a conspirator.

13 D'Onofriot says, attempted to say it was part
14 of the conspiracy that the conspirator would cause the price
15 of the Training With the Pros stock to increase, to rise,
16 to go up by inducing brokers to recommend its purchase.

17 We read the SEC testimony of Mr. Moss, tragically
18 absent from this trial.

19 Moss says that the rise in the price of the stock
20 in 1969 was attributable to certain potentially lucrative
21 contracts between Training With the Pros and several major
22 industrial corporations. He refers to the publicity
23 that had been given in various journals and trade publications.

24 I direct the Court's attention on that point to
25 the testimony of Mr. Moss which appears in his SEC transcript

1 gab-2

2 at Pages 36 and 37. He was asked, "Can you give me any
3 reason for the stock going to this price?"

4 His answer, Page 37 of his transcript: "The pub-
5 licity about the contracts would establish well-know
6 respectable, formidable industrial companies."

7 Again, suppose -- here is the Government in here
8 and they say this stock went from 7 to almost 70 because of
9 the machinations of the defendants, the conspirators.

10 Need I explain to the Court the enormous advantage
11 that would accrue to the defense were we able to put a Moss
12 on the stand to explain what was going on in the company
13 at that time and to give substantially the same explanation
14 he gave to the Securities and Exchange Commission when they
15 investigated the matter and, correlatively, need I explain
16 to the Court the prejudice to the defendants when a Moss
17 is not available to give that --

18 THE COURT: Let me ask you something, Mr. Gould.

19 MR. GOULD: Yes, sir.

20 THE COURT: This reliance on Moss seems to me to be
21 a two-edged sword from Stoller's point of view.

22 There is evidence in this case that the defendants
23 here on trial well knew that the SEC was inquiring of Moss,
24 and I would be astonished if they didn't know. So I think
25 that evidence is pretty persuasive.

1 gab-3

2 Now, Moss didn't die until a couple of months
3 ago. Passing what I consider to be a very particular
4 transcript of his testimony, which leads me to believe that
5 he may not have been credible and in many cases he was
6 distressingly vague at the very least, I don't know why
7 the defendants couldn't have questioned him.

8 MR. GOULD: We did question him. We couldn't bring
9 him into the courtroom. We didn't have a courtroom to bring
10 him into. We didn't know he was going to be dead.

11 THE COURT: The rules say you can depose a witness.
12 Maybe you didn't know he was going to die.

13 MR. GOULD: I can only tell your Honor --

14 THE COURT: Then the Government is going to say
15 we didn't know he was going to die either.

16 MR. GOULD: We didn't wait. We didn't wait to
17 get an indictment here.

18 The man was extremely ill for a number of months
19 before he died. There was no method known to man by which
20 we could have gotten his testimony and preserved it.

21 THE COURT: I am not sure that is really a matter
22 of record.

23 First of all, the original indictment here was
24 filed last fall.

25 MR. GOULD: That is right.

1 gab-4

2 THE COURT: Then we had the superseder and the
3 main indictment which came in --

4 MR. FELDSHUH: February 14, your Honor.

5 THE COURT: -- in February. Of course, I don't
6 know the details about Moss at all.

7 There is nothing in your papers which would
8 indicate conclusively that he was unavailable to the defense.

9 MR. GOULD: Your Honor, suppose he were available.
10 Suppose I sat here now with a full affidavit from Moss as to
11 what happened. What good would it do me? I can't bring
12 him into this trial.

13 THE COURT: You could have examined him.

14 MR. GOULD: With what purpose? We don't have
15 examinations before trial, depositions.

16 This man was fatally ill for many months before he
17 died. He died in July.

18 MR. SORKIN: July 2nd.

19 MR. GOULD: He died July 2nd.

20 THE COURT: Under certain circumstances you can
21 get depositions in criminal cases.

22 MR. GOULD: There was no way to depose this man
23 for months prior to his death.

24 THE COURT: Maybe so. I can't quarrel with you.
25 There is nothing in the record that points this up one way --

1 gab-5

2 MR. GOULD: How could there be? We have given you
3 in our motions what the facts are.

4 THE COURT: I don't know the facts of his illness.
5 You just say he died.

6 MR. GOULD: It is in there. It is in the affi-
7 davit.

8 THE COURT: Your affidavit doesn't say anything
9 about that except he died.

10 MR. GOULD: Yes. Suppose that the man were in
11 perfect health up to the date of his death. We are still
12 prejudiced by his absence here. Everybody is going to die
13 some day, and the mere fact that the Government waits and
14 waits and waits with a case that they have got on the back
15 burner for years results in prejudice to defendants. That
16 is all anybody can say about that. I didn't make this
17 up. There is a policy, there is a reason for Government
18 to proceed with expedition and dispatch in these criminal
19 cases.

20 THE COURT: Well, I suggest to you that this doesn't
21 impress much because surely there is an obligation, but that
22 doesn't mean every indictment has to be filed as soon as
23 defendants think it should be.

24 End 2B

25

2 MR. GOULD: I am not suggesting that, your Honor.
3 I am not suggesting that as a strict technical matter the
4 Government is not within its rights in filing an indictment
5 at 11:59 on the day before the statute of limitations ex-
6 pires.

7 That is the law. I have to accept that and I
8 can't quarrel with it. But there is a difference. When we
9 see that almost immediately after the public offering of
10 this security the Government undertook an investigation --

11 THE COURT: But Rashes has been here. He is no
12 criminal investigator. He is only looking into the Reg. A
13 offering.

14 MR. GOULD: I respectfully differ.

15 THE COURT: Your argument seems to be based on
16 two propositions. One, a couple of days after Moss was
17 deposed on May 27, 1969, the Government should have filed an
18 indictment. Two, that Moss was going to be a key defense
19 witness to contradict D'Onofrio and Bonavia and all these
20 people. That just doesn't wash.

21 MR. GOULD: Let me see, your Honor. First of
22 all I very respectfully differ with your Honor that I have
23 ever suggested that a couple of days after Mr. Moss testified--

24 THE COURT: All right.

25 MR. GOULD: I think that is unfair to my argument.

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2 THE COURT: I will accept that literally it is.
3 You know what I am trying to say. I am trying to say
4 that apparently the assumption is reading your papers that
5 because Moss was deposed way back there in terms of
6 deciding whether or not to remove the Reg. A exemption from
7 these people that somehow the indictment should have been
8 returned years before it was.

9 MR. GOULD: Yes, I think it should have been.
10 First of all, I must differ with another assumption that
11 your Honor made. That is that when Mr. Rashes was investigat-
12 ing this matter he was simply investigating the propriety of
13 a Reg. A offering.

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15 error on that. First of all, Rashes has nothing to do with
16 Reg. A offering. Rashes by his own testimony was then connecte
17 with the enforcement branch of the Securities and Exchange
18 Commission.

19 THE COURT: Wait a minute. That isn't what he
20 said. I will read his testimony. But be that as it may, he
21 wasn't looking at this as a stock fraud case.

22 MR. GOULD: Yes, he was. Look at the warning he
23 gave to the people.

24 THE COURT: They always do that.

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with here.

THE COURT: He recognized as a Commission lawyer it could be.

MR. GOULD: Your Honor, you have only to examine the private file of the Securities and Exchange Commission, and I have never seen it, but I guarantee to you, and it is sitting here somewhere, I guarantee to you that the private file contains documentary proof that at the time of the examination Moss, of Stoller and of any other witness in this case the Government was concerned with a charge of manipulation. I will stake my license on it.

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MR. GOULD: We can dispose of it in a moment.

THE COURT: You know and I know and Rashes has told us, and I have no reason to disbelieve him, the only result he knows of his investigation is that the Reg. A exemption was removed.

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THE COURT: Fine, but that is all he knew about it.

MR. GOULD: That is not all he knew. That was a negotiated arrangement of which I have made hundreds in

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2 my life with the SEC.

3 THE COURT: That is now what I understood him to
4 say. I also agree with you, however, that generally speaking
5 these people would have been out of their minds if they
6 didn't listen to somebody like Stoller and Moss and begin
7 to think, Well, maybe there was a manipulation here."

8 MR. GOULD: I will stake my right to practice before
9 this Court on the proposition that after listening to those
10 people they reached the conclusion that there was no evidence
11 of a manipulation because, as Mr. Rashes testified, in the
12 year 1969 what happened to the market price of Trading With
13 the Pros had happened to hundreds of securities, none of
14 which were the subject of manipulation.

15 But we wonder. From my point, the only thing I am
16 urging to your Honor is that we are prejudiced by the absence
17 of Moss and that the Government having taken all these years
18 comes along now at a point when we are prejudiced. What
19 in heaven's name would we have done?

20 THE COURT: What do you think Moss would do for the
21 defense?

22 MR. GOULD: I know what he would do because I have
23 read his sworn testimony. He would come in here and say
24 "D'Onofrio was a liar, we never had any such conversations."

25 THE COURT: Well, maybe.

MR. GOULD: Not maybe. He says so in his sworn testimony.

THE COURT: I know.

MR. GOULD: Unless they could get him to come in here as they have other witnesses who happen to be under indictment in other cases or convicted in other cases and say, "I have lied when I said so."

THE COURT: You want this Court to draw the inference that everything Moss says was truthful and everything everybody else said is not truthful. I can't do that.

MR. GOULD: It is for a jury to determine.

THE COURT: The jury is not going to decide this motion.

MR. GOULD: But the prejudice to the defendant results from the absence of Moss. You can no more, your Honor, assume that Moss would have recanted in this courtroom than I can assume that he would have been indicted in other cases.

THE COURT: You can't have it both ways.

MR. GOULD: I don't want it both ways.

THE COURT: You certainly do. You know what this sounds like to me -- and this is simplistic and I don't mean to be critical, but this sounds like an argument that if you read that little Illinois hick's testimony, Bonavia,

1 and Bonavia weren't here you could come in and say the
2 same thing and, believe me, Bonavia didn't help the defense
3 in this case. You know it and I know it.
4

5 MR. GOULD: I quite understand.

6 THE COURT: That is your argument on Moss.

7 MR. GOULD: Not at all.

8 THE COURT: Bonavia told some whoppers to the
9 Commission. How do I know that Moss didn't. The Govern-
10 ment will stand up if we give them a chance and says, "That
11 is exactly our position."

12 MR. GOULD: What position?

13 THE COURT: They will say, "Sure, but we don't
14 believe Moss and we don't think Moss would be believed."

15 MR. GOULD: You are coming around to my point.
16 I don't believe Bonavia and it is not for you or me to
17 believe anybody.

18 THE COURT: This kind of argument is folly. It
19 is an exercise in futility. The only point I am making
20 is that I am not at all persuaded by your assumption that
21 Moss is a great aid to the defense.

22 MR. GOULD: Very well. I only know from one
23 source what Moss would have said. That is his sworn testi-
24 mony before the SEC.

25 THE COURT: You could have made that point

1 if Bonavia had happened to lie on July 2nd. Anybody such
2 as yourself or myself could have pulled out the testimony
3 before the SEC and said, "Look there is no defense."
4

5 MR. GOULD: First of all, there is no testimony
6 of Bonavia before the SEC. I wish there was. But it would
7 be very simple. He would say the same thing he said about
8 his grand jury testimony, that "I committed perjury."

9 But we are not entitled to assume that every witness who comes
10 into this courtroom who has testified in another place is
11 going to say, "I am sorry I committed perjury the last time
12 and now that I have encountered the radiant personality of
13 Ike Sorkin, you can like St. Paul on the way to Damascus, say
14 I have seen the light and I am an honest man. That isn't what
15 happens with human beings.

16 When a key witness is dead, you are asking me, your
17 Honor, to make the assumption that if he were alive he would
18 have been converted to the true faith.

19 THE COURT: What I am trying to demonstrate is
20 the terrible problem that you don't want to concede here
21 and that is that this is all conjecture. Who knows?

22 MR. GOULD: Conjecture up to the point, to the
23 fact, that we have the man's sworn testimony and prima
24 facie when a citizen goes before a Government agency, is
25 given warnings and testifies under oath, prima facie the

1 fellow is trying to tell the truth. The mere fact that
2
3 we have been exposed, both you in your background and I in
4 my background, to hundreds of regenerated criminals who have
5 been enlightened and brought to truth and nobility by
6 administrations of the United States Attorney's office or the
7 Treasury Department or the SEC, that doesn't change that pre-
8 sumption.

9 We still must presume that when a man testifies
10 under oath he is telling the truth until the converse is
11 demonstrated. There isn't a shred of evidence, except out
12 of the mouths, the mouth, of one admitted perjurer. There
13 is not a shred of evidence that Moss wasn't telling the truth.

14 I could go on belaboring this. Your Honor says
15 I am not impressed because I don't know what Moss would
16 say. Fine, I don't know either.

17 THE COURT: I will tell you why I am not impressed.
18 I will make it blunt for you and we will stop. I don't
19 want to wrangle with you any more on this. I am trying to
20 make a point that I think you have to address yourself to
21 if you are going to get anywhere here. That is this: Forget-
22 ting D'Onofrio, there is documentary evidence here which
23 supports D'Onofrio. Forgetting D'Onofrio and having him
24 blow away isn't quite that easy.

25 MR. GOULD: Your Honor astonishes me. I don't

1 know a single piece of documentary evidence that supports
2 D'Onofrio.
3

4 THE COURT: There is plenty of evidence.

5 MR. GOULD: I want to know what it is.

6 THE COURT: The record reeks of continuous busi-
7 ness relationship between Stoller, Herbert, Allen, D'Onofrio,
8 Arden. There is no way of getting around it.

9 MR. GOULD: No question they were in business
10 together. That doesn't prove a manipulation.

11 THE COURT: The manipulation --

12 MR. GOULD: Your Honor said documentary.

13 THE COURT: What are all these splendid nominee
14 counts?

15 MR. GOULD: What is wrong with them?

16 THE COURT: Not as such there is nothing wrong, but
17 the total mosaic is very compelling.

18 MR. GOULD: That may well be.

19 THE COURT: How is Moss going to come in and blow
20 all that away?

21 MR. GOULD: By saying D'Onofrio is a liar.

22 THE COURT: Who says that is going to be the truth?
23 You see you want to have your cake and eat it too.

24 MR. GOULD: I simply urge, and I think I do it
25 conscientiously, and I think I am right, that if Moss were

2 here and Moss gave the same testimony that he gave before the
3 Securities and Exchange Commission he would be helpful
4 to the defense.

5 Of course I am no child. I am no novice. I know
6 maybe they could get him to admit that he was a liar, as I
7 got D'Onofrio and Feeney and the rest of them to admit they
8 were liars.

9 THE COURT: Look, once again you and I are getting
10 into something where I do agree with you, none of us know what
11 Moss would do. But the point I am trying to make is for the
12 defense to say, "Look, Judge, we agree we don't know what
13 Moss would do," but in the next breath to say, "We say
14 Moss would help us," this to me is the whole point I am trying
15 to make.

16 That to me is a nonsequitur of the highest order.

17 MR. GOULD: I do not concede that we don't know
18 what Moss would say because we have his sworn testimony.

19 THE COURT: You then have to say that what you are
20 really saying is "Judge, that is his sworn testimony,
21 that is true there is no doubt about it."

22 MR. GOULD: That is right, up to now. We must
23 make the assumption that if the man were alive and
24 he got on the witness stand he would give the same testimony
25 he gave when he was under oath in 1969.

1 THE COURT: Do you want to unfrock yourself
2
3 as a cross-examiner?

4 You have spent days in this trial demonstrating.
5 to my satisfaction at least, that sworn testimony does
6 not mean an awful lot to people.

7 As a professional nisi prius Judge I can tell
8 you my own experience corroborates this.

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2 MR. GOULD: I also feel that there is a tendency
3 on the part of professional nisi prius judges to give
4 a little more credence to the Government's lawyer than
5 to the defendants' lawyers and I would have to quarrel
6 with that.

7 THE COURT: Even if I accept that unkind remark --

8 MR. GOULD: I don't mean it to be unkind. It's
9 inevitable when a judge has been on the bench and listens
10 to the Itkins and appreciates --

11 THE COURT: I will tell you why I regard it as
12 unkind --

13 MR. GOULD: I don't mean it to be.

14 THE COURT: I accept that. I tell you why I
15 think it is unkind. Again, and so often as happens in American
16 jurisprudence, defendants and judges forget and lawyers
17 forget that when a defendant insists on his constitutional
18 rights to a trial by jury of his peers for all they know
19 they may be ignoring one salient point, if the judge really
20 had the power to be the tryer of the fact he might then
21 properly exercise his factfinding powers, mirabile dicto
22 in favor of some defendant and this to me is a gorge,
23 unassailable possibility that no lawyer or judge when
24 he writes has the courtesy or the practicality to admit.

25 Once in a while, but so often not.

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2 Let's get back to this.

3 MR. GOULD: I want to make one final remark for
4 the record. I am not deceiving myself. If Mr. Moss
5 were alive and healthy I might have to face the possibility
6 that Moss would have sat in the witness stand as the chief
7 accuser and maybe D'Onofrio would have been a defendant
8 because they would not have needed D'Onofrio.

9 I know those things. I am not a baby. I am
10 conscious of the realities of criminal prosecutions.
11 Apparently these gentlemen forget that I was once a
12 prosecutor myself. I know something about this.

13 THE COURT: You can't blame him after listening
14 to you.

15 MR. GOULD: They weren't even born. I might
16 deliver a dissertation on the difference in standards but
17 that is irrelevant. I understand about Moss. Nevertheless,
18 I respectfully urge on this Court that as far as we know
19 Moss gave sworn testimony and there is no proof that he
20 was a liar and if your Honor doesn't agree with me that
21 it is prejudicial, that is a matter of professional
22 judgment as between us and I am not going to waste your
23 time, your Honor, trying to persuade you that I am right
24 and you are wrong. I still think I am right. I still
25 think we were prejudiced. I think it ought to be a policy

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2 in the United States Government to bring cases to trial
3 quickly. To bring indictments quickly and that the
4 Government shouldn't have the advantage of working for years
5 and years and making these scandalous, sordid deals with the
6 D'Onofrios and the Feeneys and people like that and then
7 expecting a private citizen with no money and no resources
8 after the passage of many years to try to match the impact
9 of their vast resources and their vast prestige. That
10 is why I say we are prejudiced.

11 THE COURT: May I ask you another question.
12 I have always understood, but again I may be wrong, that
13 the defendants are urging pre-indictment delay.

14 MR. GOULD: That is correct.

15 THE COURT: That to me means that you may not be
16 arguing traditional Sixth Amendment type delays.

17 MR. GOULD: I think they come together. This is
18 an old dispute.

19 THE COURT: I don't want to argue with this at
20 all. I just want to understand.

21 MR. GOULD: I think it amounts to Sixth Amendment
22 delays. I think defendants are entitled to a speedy trial.
23 Inherent in the constitutional requirement for a speedy
24 trial is that the prosecuting agency get off its duff when
25 it knows the facts and not take advantage of the elapse of

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2 time and not take advantage of the accrual of benefits
3 that they get as against the impossibility of a defendant
4 to deal with events that happened six and seven and eight
5 years ago. We have no problem with possible indictment
6 delay because our own circuit Court of Appeals has said, "This
7 is it, get the case tried."

8 I think it would be a nice thing if somewhere
9 we could legislate into existence a requirement that when
10 the Government knows the facts it has to move on it.

11 It can't wait until midnight before the statute
12 of limitations runs out. But that is not the law. This
13 is discretionary with the Court. It requires a demonstra-
14 tion of prejudice and all I can do is to say that we are
15 prejudiced when a man who swore, the absolute converse of what
16 the Government's principal witness said, that man isn't
17 here and he isn't here because of the passage of time.

18 If they waited long enough Mr. Stoller wouldn't
19 have a Milton Gould to defend him either because I am
20 going to die some day and they would be better off with
21 some kid in here defending him than with me.

22 I don't think there is much sense in arguing
23 any more. If I don't impress your Honor I will subside
24 with the same respect I have for the Court when I started
25 the discussion.

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2 I simply remind your Honor that in addition to the
3 refutation of D'Onofrio that we derive from an examination
4 of Moss' sworn testimony before the SEC, if we look at
5 the Bonavia testimony which apparently impressed your
6 Honor, Bonavia testified that he had two private conversa-
7 tions with Moss in which he said Moss denied certain facts
8 that Stoller had asserted.

9 Your Honor will understand that if Mr. Moss
10 were here we would be able to contradict that testimony
11 out of the mouth of Mr. Moss. I have nothing more to say
12 about it. I renew the motion. I understand your Honor's
13 views about it.

14 If your Honor finds in his discretion after having
15 heard the Government's proof that these defendants are not
16 prejudiced, I have nothing to do but accept it.

17 THE COURT: You may be assuming something you ought
18 not to assume. My only point in interrupting you was that
19 I still believe you are misconceiving what troubles this
20 Court about your position. Again, I don't want to
21 start any wrangles and I am not accusing you of showing
22 any disrespect to the Court.

23 MR. GOULD: Your Honor knows that would never
24 happen.

25 THE COURT: Of course. Again, I seem to be having

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2 the same difficulty with you that I have had continually
3 with Mr. Sorkin and Mr. Edwards about that Frank overhear
4 point. I am not sure there has been a meeting of the
5 issues here.

6 In any case, I would like to pause here and
7 ask you, Mr. Feldshuh, have you got anything to add to this
8 argument?

9 MR. FELDSHUH: Yes, your Honor.

10 Mr. Gould emphasized considerably on the SEC
11 testimony of Mr. Moss. I, on the other hand, accepted that.
12 I go to D'Onofrio's testimony that is in the record here
13 before your Honor. I have categorized without belaboring
14 the point the various places in the transcript wherein
15 there is reference to contacts between D'Onofrio and Moss
16 and the impact of that upon the Defendant Frank.

17 If I have your Honor's permission I would be
18 pleased to hand this up without giving verbally these various
19 references. I will give to the Government a copy of this
20 paper, if Mr. Sorkin will accept it.

21 Your Honor, with regard to the Marion case and
22 with all due respect, your Honor, the Marion case, at page
23 404 US 325 says actual prejudice. Sure it is actual
24 prejudice but that doesn't depend upon what we believe or
25 not believe.

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The point is the availability of some evidence that because of the delay was not available. Might I point out with some degree of emphasis, your Honor, that D'Onofrio when he first came back -- and I am now referring your Honor to the subparagraph D of my little outline at transcript 551 -- it appeared that D'Onofrio was very much engaged in contacts with the United States Attorney talking about a lot of crimes or a lot of other crimes and he was spending his time, as he testified, with many Assistant United States Attorneys.

From the point of view of tactics, your Honor, it was the United States Attorney and the Government who decided that this is the way we are going to handle D'Onofrio. We are going to get him in here and despite the fact that on May 22nd and May 23, 1973 he had seen Doonan and talked to Doonan about the Training With The Pros situation, nevertheless they put D'Onofrio on ice as far as Training With The Pros was concerned and they were having him develop other situations.

I say that this was a matter of tactic on behalf of the Government.

Your Honor will also recall that one of D'Onofrio's very important points was that in July of 1969 he came in and he told Moss and he told Herzfeld that they better

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2 get Martin Frank as their lawyer. Moss obviously doesn't
3 agree with that. How do we prove that, your Honor?
4 We prove that by the fact that there is a retainer letter
5 dated May 29, 1969.

6 If Mr. Moss were here he could state plainly his
7 dissatisfaction with Barton and that D'Onofrio had nothing
8 to do with forcing Moss into selecting Mr. Frank. And
9 it wasn't that kind of duress and pressure as if it were
10 part of the original scheme and plan.

11 May I say also, your Honor, one of the key areas
12 in this situation is the Bank Hofmann letter of indication.
13 You recall his testimony where he said that Frank told him
14 and others that he had now taken care of the destruction of
15 that letter.

16 Now, I would submit, your Honor, that with Mr.
17 Moss here that so-called episode could be laid at rest
18 because it was Mr. Moss who gave the letter to the SEC
19 and it was the SEC who, through Mr. Rashes' testimony,
20 through the transcript, had that letter marked as SEC
21 Exhibit 1 in connection with the investigation.

22 Again, we have at transcript 1075, we have the
23 testimony of Marilyn Herzfeld and she says that Moss
24 mentioned Ramon D'Onofrio and overseas conversations.
25 We would certainly have to have Moss in here to give us

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2 the purport of those conversations. In addition to that we
3 have Bonavia allegedly discussing the bank letter with
4 Ramon D'Onofrio from her mouth. We have a series of places
5 with regard to where Moss' testimony was urgent and vital
6 to the interests of the Defendant Frank.

7 At transcript 1085 we have a telephone conversation
8 of Moss with Ramon D'Onofrio with regard to his alleged SEC
9 testimony or with regard to his SEC testimony on May 27,
10 1969. It was there, may it please the Court, if Moss were
11 here we would have the testimony out of Moss' mouth as to
12 what happened at that episode immediately following the SEC
13 testimony on May 27, 1969.

14 It is our view that we would prove out of the
15 mouth of Mr. Moss that it was Mr. Moss who was dissatisfied
16 with Barton and wanted an SEC lawyer to be retained and not
17 Mr. D'Onofrio who was forcing anything on anybody.

18 Your Honor, also with regard to Mr. Bonavia and
19 his testimony where he gives conversations allegedly between
20 Mr. Moss and Mr. Bonavia at transcript 1509 and 1512, in
21 all of these areas, and it is all listed in the memorandum
22 that I gave you, in all of these areas that Moss' presence
23 is urgent and vital.

24 I respectfully submit that under Marion it is
25 not for us, neither Mr. Gould nor myself or Mr. Sorkin

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2 nor your Honor, to determine whether or not Moss would be
3 repudiated as a liar in his cross examination. It is
4 merely for us in a situation where the Government chose to
5 keep D'Onofrio on ice and didn't go forward with the TWP
6 prosecution and indictment, that that unfortunate circum-
7 stance of Moss' death, that is a circumstance that
8 must fall upon the head of the Government under Marion
9 and under the Sixth Amendment of the Constitution.
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2 THE COURT: Let me ask you something, Mr.
3 Feldshuh.

4 Can you point to me one reference to your partner
5 and client, Martin Frank, in the transcript of Mr. Moss?

6 MR. FELDSHUH: No, sir.

7 THE COURT: None?

8 MR. FELDSHUH: None.

9 THE COURT: Absolutely none.

10 MR. FELDSHUH: I agree with you.

11 THE COURT: Let me say to you, which apparently
12 you and Mr. Gould did not understand. My view of the Moss
13 transcript is quite different than your arguments or your
14 briefs suggest. My view is that in substantial measure Moss'
15 deposition before the SEC can be deemed to corroborate
16 Ramon D'Onofrio in very many important particulars. It
17 is true there are some important particulars what we
18 heard here by D'Onofrio. They are by no means what you call
19 a flat refutation of D'Onofrio's testimony.

20 Indeed, if I were the Government, to be perfectly
21 frank, I would very much like to have Mr. Moss here even
22 if he didn't come out with more details and clear up
23 certain ambiguities than exist in this record. I'm sorry.
24 I don't read it the way you gentlemen brief it.

25 Perhaps that may give you some understanding of

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2 why I take a somewhat different view of matters here.

3 MR. FELDSHUH: May I comment on that, your Honor?

4 THE COURT: Yes, sir. I wish you would. There
5 is absolutely nothing in the Moss transcript that
6 suggests that he would be any help to Martin Frank whatsoever.

7 MR. FELDSHUH: Except one vital area.

8 THE COURT: What is that?

9 MR. FELDSHUH: In the transcript Mr. Moss testifies
10 about the five, six people who helped him float the stock.

11 Now, your Honor -- it was even there as to whether
12 or not the SEC would consider these people as under-
13 writers in violation of Section 5 of the Act, of the '33
14 Act.

15 Now, I say to you, your Honor, when Moss Talks
16 about these people floating the stock and helping him float
17 the stock, how do we come to this nominee business? Is
18 that not pertinent to Mr. D'Onofrio's comment about nominees
19 when Moss says, as far as I'm concerned, I had five people,
20 none of whom is a nominee of anybody.

21 I suggest to you respectfully your Honor that
22 that does fall upon Mr. Frank, even though his name
23 is not mentioned. It isn't necessary, sir, that a piece
24 of evidence --

25 THE COURT: What I do suggest to you is, if you

join in the argument that Moss is crucial to Frank, there doesn't seem to be any particular indication that that is so at all.

MR. FELDSHUE: Except one point.

THE COURT: You rely on the transcript. You can't ask me to go off into some other direction if you ask me to look to the transcript.

MR. FELDSHUE: I don't want to go off on any other direction, your Honor. Of course, I go along to the extent that it is applicable to Mr. Frank with whatever Mr. Gould says.

However, your Honor, I'm making emphasis, your Honor, on the transcript on what happened in this courthouse. I have delineated those pages with a degree of exactitude and I respectfully address your Honor to that.

I ask your Honor to please consider those elements and then we can go on from there and let your Honor determine whether or not the prejudice is there as far as Martin Frank is concerned.

MR. GOULD: Your Honor, I would like to mention two things and then I will subside on this subject, at least.

First of all, it is conceded by the Government -- this is a quotation -- "D'Onofrio was cooperating with

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2 the Government as early as 1970."

3 THE COURT: No doubt about it. It is also conceded
4 by you that he was involved in many other investigations,
5 in trials which have been memorialized for the future,
6 if anybody is really concerned and there are various opinions
7 of this in the Appellate Court in this building.

8 MR. GOULD: All that means is that D'Onofrio was
9 very busy on other matters.

10 THE COURT: Right.

11 MR. GOULD: And therefore the defendants had to
12 wait until D'Onofrio or the Government was willing to try
13 him in this one.

14 THE COURT: Mr. Gould, one of my problems is, though
15 I grant you to read some of the opinions that we read in
16 this world and we write, and the briefs we write and we
17 read, you think otherwise. You've got to assess these things
18 with a little practicality.

19 I do not believe that one can ignore what has
20 been going on.

21 I don't want to hear any more. Do you want to
22 add anything to your brief on this, Mr. Sorkin?

23 MR. SORKIN: I do, your Honor, just a couple of
24 points.

25 Point No. 1, your Honor, most recently Mr.

Feldshuh's five people, Kanter, Feeney, Kirschbaum, Wu and Pfingst. Feeney was on the stand. Not once did he ask Feeney one thing about an underwriting and he had this transcript.

Point No. 2, your Honor; back on April 26th Mr. Derfner of Mr. Feldshuh's firm filed an affidavit in support of their motions for discovery and inspection. In paragraph 27 they admit that Moss, and I'm quoting, "Is currently residing in Florida, has suffered three heart attacks to date and will not be available as a witness at the trial of this criminal proceeding due to his severe heart condition."

They had ample opportunity, at least they knew as of April 26, '74 that Mr. Moss was in ill health and they could have deposed him.

The next point I want to make, your Honor, is this:

This question of Mr. D'Onofrio's cooperating. I think counsel for the defendants well know that Mr. D'Onofrio really didn't begin cooperating on Swiss banks and stock manipulations until he got back from Switzerland, which was in May of 1973.

He spoke to Mr. Doonan very casually as he testified on Training With The Pros and it was not until

July of '73, which is just almost -- as soon as he got back that D'Onofrio was thrown into the grand jury and he testified about Training With The Pros.

Up to that point, your Honor, all the Government had was D'Onofrio. The grand jury began to hear this information in the fall of 1973, began to call witnesses, and lo and behold Mr. Allen skips and doesn't come back until January.

On January 15th when the Government felt it had sufficient evidence to put before the grand jury to -- January '74, your Honor, to get an indictment, it acted expeditiously and an indictment came down one month later.

THE COURT: Unless there is something else specific, I don't think you have to press it any further. I regard this motion as totally lacking in merit.

Anything else you want to say?

MR. SORKIN: I merely wanted to preserve the record in view of the fact there may be an appeal on this.

THE COURT: Sure.

MR. SORKIN: The next thing I want to point out, your Honor, is that Mr. Moss' testimony has been contradicted by Herzfeld and it has been contradicted by Bonavia and it has been contradicted by D'Onofrio.

THE COURT: Again, this is a point that I tried

to make with Mr. Gould, but he didn't see it that way. It points up one of the real problems with this kind of a discussion.

MR. SORKIN: One other point too, your Honor. Even assuming that Mr. Moss' testimony is true, and your Honor is absolutely correct, we don't concede that it is true, but even assuming that it is true, all Moss was testifying to, your Honor, was what his knowledge of the facts were. It is clear from the testimony in this entire case that Moss was not present at the Baur au Lac meeting, Moss was not present at Frank's office in November of 1968 when the nominee strategy was planned. He was not present when they had to get receipts in March of '69 to prove proof of ownership and he wasn't present when Mr. Stoller came back from the SEC and told Mr. Frank that he testified.

He wasn't present at any of the so-called vital meetings, which the Government thinks are of extreme importance to this case.

After May 1969, May 27th, when he testified, he no longer appears. He just doesn't appear. He is not present in late '69 when Bonavia comes in and sees D'Onofrio and Stoller. He is not present when Bonavia meets Stoller and Frank and he is just not there.

It may be what Moss says is true for the sake of

argument. That is what he believed the true state of affairs.

He believed that the contacts were the ones that were forcing the price up. He may not have known. There is no evidence in his testimony that he knew that Mr. Stoller -- there is no evidence in his transcript that Mr. Moss knew that Mr. Stoller had touted Mr. Schneidman on the stock, had touted Elinor Wien on the stock, had touted Hyman and Allen as well with Walter Paruch.

There is no evidence that he knew that the stock was going up on the basis of artificial manipulation.

I think your Honor has stated the other points. I don't think I should belabor the point.

MR. FELDSHUH: Just for the record, your Honor, one final point.

Mr. Moss is represented by counsel, a man by the name of Arthur Litts.

As his counsel Mr. Litts refused to permit Mr. Moss to be interviewed or deposed from the time --

THE COURT: Mr. Feldshuh, no lawyer in this case ever applied to this Court for an order to have his deposition taken.

Even the lowliest newspaper reader in the Watergate era knows that there are rules taking care of this

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2 problem.

3 My affection and respect for you and Mr. Gould
4 remain undiminished, but I must say, coming from you two
5 veterans this doesn't impress me.

6 MR. FELDSHUH: Your Honor, may I just put this
7 in the record. Moss was subpoenaed by the Government to
8 appear before the Training grand jury and was excused
9 due to his ill health.

10 Mr. Sorkin, that is true, is it not?

11 MR. SORKIN: Your Honor, not only is that true,
12 but I should add further, we received a letter back from
13 Mrs. Moss I believe in which it was stated that they had no
14 objection to us coming down to Florida and seeing him.

15 I will be happy to show that letter to Mr.
16 Feldshuh.

17 MR. FELDSHUH: You never told us about that.

18 MR. SORKIN: You never asked about it. You never
19 made a motion.

20 THE COURT: Let's not get off into this kind of
21 argument which has become all too prevalent in our case.

22 This motion which I will accept Mr. Gould's
23 view of as both a pre-indictment delay motion, such as
24 the kind discussed in such cases as United States versus
25 Marion and also viewed as a motion for a denial of a

speedy trial in contravention of the Sixth Amendment, viewed in both lights, I regard the motion as totally lacking in merit because of the peculiar circumstances in this case.

As is well known by this time, the defendants raise two basic arguments in addition to the chronological passage of time. Defendants properly concede that the Government filed the indictment well within the statute of limitation period, although certainly not in the beginning thereof.

But turning to what I regard the more crucial arguments, the defendants seem to argue two things.

First of all, that the witnesses seemed to be vague as to dates, and truly a number of them were.

Second of all, the defendants argue most importantly that Elmer Bud Moss, the former president of this organization most lately known as Training With The Pros, was a crucial witness for them and the fact that he died as he did apparently in July 2nd of this year amounted to gross prejudice requiring this Court to grant this motion dismissing the indictment.

In my opinion, the arguments of Mr. Moss are not only unconvincing but are the most holy kind of arguments I can imagine in a court of law on this issue.

To begin with, it is stated in the papers and here this morning that if you read the transcript of Mr. Moss before the Securities and Exchange Commission taken on May 27, 1969, that that transcript flatly refutes Ramon D'Onofrio. In my opinion, that is absolutely not true.

It is, of course, true that any transcript contains its differences on certain subjects between two witnesses. I have to agree to that. Here and there there are things that could be read as differences.

More importantly I read the transcript as corroborating D'Onofrio.

I also have to say that though Mr. Gould and Mr. Feldshuh are clearly right, we don't know what Moss would say if he were brought in here now. Maybe he would corroborate his transcript or say it was true, maybe he wouldn't. We don't know that. We can't make a determination of that here, nor can we make this motion turn on that unknown fact.

On the other hand, I think it is very wrong and I want the record to show that I manifestly disagree with the flat conclusions which the defendants offer about that transcript.

Further than that, this is a case wherein there appear documents. Those documents have been available to the defendants for a good long time. The defendants

have not only had discovery from the United States Attorney but more importantly they have been able to get certain documents from others who were involved in this case. They also have documents of their own as is manifest from the trial of this case so far.

This is not a case where the defendants are totally in reliance upon testimony of others and nothing else. It is far from that.

Third of all, contrary to the contentions made to my astonishment here in an American courtroom this morning, there is absolutely nothing to the canard that Moss was unavailable for deposition under the Federal Rules of Criminal Procedure.

The record will bear me out I trust that no counsel ever made an application to depose Elmer Bud Moss prior to trial and it is perfectly apparent from concessions made here this morning that the defense lawyers as well as the Government were aware that Moss had some heart condition for some months prior to his death.

Finally, I note that it is totally unconvincing to suppose that Bud Moss, whether he was lying or telling the truth, would be much help for the very reason that the Government just underscored. Moss, according to all of the evidence in this case, really went out of the picture

as knowing what was going on in many important respects pretty much after his testimony before the SEC on May 27, 1969.

Now, that is not all. The reliance or the claim of prejudice because of the death of Moss is unconvincing in a number of other respects. We have had the testimony of people who now it is claimed Moss supports were the managers of this underwriting, people like Kirschenbaum, Joseph Pfingst, who is now residing happily in a Federal Bureau of Prisons institution and who, to my knowledge, is going to apparently be produced as a witness, and others who are not deceased.

Defense as far as I know could have approached them and maybe even did. I could go on but I think that is sufficient to the hour.

The motion is totally lacking of any convincing merit whatsoever -- excuse me. There is one other important thing, and I have done a disservice to Messrs. Gould and Feldshuh in ignoring it, which I didn't mean to do.

It is true as they argue that Ramon D'Onofrio has been cooperating to some extent with Government lawyers and agents since sometime in 1970. We know from recorded cases in this circuit of district courts and the Appellate Court that this is so.

1 On the other hand, the Government is quite right
2 in pointing up the fact that D'Onofrio was running around in
3 Switzerland and he told us about this, and he really didn't
4 return home and start cooperating with the United States
5 Attorney in this district in this case until sometime in
6 May or June of 1973. We know he returned home, but it
7 wasn't until the summer.

8 I don't think it is any indication of an
9 improper delay that the Government didn't return its
10 indictment until after grand jury proceedings in the fall
11 of '73.

12 There is absolutely no evidence that the Government
13 purpsely delayed matters in this case in order to lull the
14 defendants or in order to prejudice the defendants or in order
15 to mislead the defendants. There is absolutely none.

16 Therefore, I deny the motion in all respects.

17 Now, Mr. Gould, what do we get to next?
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2 MR. GOULD: I would like to address myself now
3 to a motion which I now make to dismiss the so-called
4 false statement counts.

5 THE COURT: All right.

6 MR. GOULD: Counts 11 through 16.

7 If your Honor please, in Count 11 there is a
8 recitation of the testimony in which Stoller describes his
9 relationship with Bank Hofmann. He said he was a parttime
10 advisor to the bank, that he advised the bank as to interest-
11 ing situations and that he is rewarded through the bank in
12 the event of profits. He said he told the bank that this
13 stock, Training With the Pros, was highly speculative and
14 dangerous.

15 Then he went on to say that the bank's relationship
16 with its clients is unknown to him and that the bank doesn't
17 tell the United States Government or Philip Stoller who
18 its clients are.

19 THE COURT: Stop right there.

20 MR. GOULD: Yes.

21 THE COURT: I have always regarded this count with
22 complete lack of understanding as to whether it really states
23 any claim at all.

24 You remember that prior to trial you gentlemen
25 attacked this count on behalf of Stoller, I decided that

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2 I better listen in fairness to the United States before I
3 rule. But the fact is at that time, for example, and today
4 I still don't understand exactly what this means.

5 I am not convinced there is any really compelling
6 evidence that any of this is particularly false. It may be
7 a little bit vague, it may be a little bit less than the whole
8 truth, but that is not the charge.

9 MR. GOULD: Since Bronston we have no confusion
10 about that kind of stuff.

11 THE COURT: Let me hear from Mr. Sorkin.

12 MR. GOULD: Very well.

13 THE COURT: I don't understand this, Mr. Sorkin.

14 MR. SORKIN: Yes, your Honor.

15 Y our Honor, the Government took the position --
16 let me first review what I can of the evidence. Mr. Stoller's
17 statement in here, "That the bank, they do not tell the
18 United States Government who their accounts are, they cer-
19 tainly tell Philip Stoller."

20 Further up in their Page 17 of the indictment,
21 "I have no knowledge as to what they do with their clients."

22 I think the evidence is overwhelming that not
23 only did Mr. Stoller know what the bank did with their
24 clients, to wit, Bonavia, Allen, D'Onofrio, but in fact,
25 I think the evidence is overwhelming that Mr. Stoller was

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2 a client of the bank.

3 THE COURT: Wait a minute. All of that is accepted.
4 The only trouble is, as a general proposition what he is saying
5 here is true. You see, the questions weren't that specific.
6 That is why the defense keeps harping on United States
7 versus Bronston.

8 MR. SORKIN: I appreciate that, your Honor. The
9 position we took on the motions for discovery and inspection
10 was that this can be distinguished from Section 1621 and
11 1623 which Bronston addressed itself to.

12 THE COURT: That is true, it did.

13 MR. SORKIN: This, and I think it is clear in this
14 Circuit -- I don't want to belabor the point. I think
15 U. S. against Gilliland, 312 USC 6 and U.S. against Diego,
16 320 Fed 2d 898 of this Circuit, clearly say that the purpose
17 of 1001 is to in effect prevent the testifying witness
18 from misleading and creating in the eyes of the agency a mis-
19 understanding as to the true state of affairs.

20 I think Mr. Stoller's testimony on each and every
21 one of the counts, and I will address myself to each and every
22 one of them, is a massive attempt to confuse, mislead, mis-
23 direct the SEC from understanding, what really took place in
24 connection with the Training With the Pros underwriting.
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2 I concede if Bronston was applied to this test, the
3 fault lies in the questioner, although I am not accusing the
4 questioner of the SEC. Probably he didn't pin Mr. Stoller
5 down. It is probably evident in the transcript Mr. Stoller
6 was a tough cookie to pin down in the SEC. Mr. Stoller's
7 attempts before the SEC to mislead and use the SEC as to what
8 really went on here, I think that is the crux of the count
9 and I think that as a matter of law is sufficient to sign
10 the count.

11 MR. GOULD: I think, your Honor, that is an argument
12 which pays much more credit to Mr. Sorkin's imagination than
13 his scholarship. We are supposed to be dealing with perjury
14 here.

15 If the Government wants to legislate into existence
16 a crime called not cooperating with the Government in an
17 examination, they better do it and we can indict a fellow for
18 that.

19 I think this is clearly within Bronston and I
20 don't think there is any way in which a man can be charged
21 with perjury for what went on here.

22 THE COURT: Mr. Sorkin is literally correct when
23 he says that Bronston didn't involve the same statute.

24 MR. GOULD: Different statutes, same principle.
25 I mean, you can't send a man to jail because the examiner in

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2 the SEC didn't then follow up and say to him, did you ever
3 hear of a man named D'Onofrio? Do you know anything about
4 his relationship with the Bank Hofmann?

5 They didn't do it, they don't do their job on
6 this count, if that is what they were after.

7 You see, I would like to add one thing. I think
8 my friend's mind is a little conditioned by the existence
9 of the statute like 10B(5). 10B(5), you are in trouble
10 not only for what you do, but what you don't do. If you are
11 selling securities and you hold back, that is actionable.
12 We are not dealing with 10B(5) here. There is no 10B(5) in
13 a false statement or perjury offense.

14 If you want to convict a man for telling a lie,
15 you got to ask him a question and he has got to give you
16 a demonstrably false statement to that question.

17 That is not what happened here.

18 There is no way the count can stand.

19 THE COURT: All right. You made your point.

20 Let's go to Count 12.

21 MR. SORKIN: May I just add one thing, your Honor,
22 which I meant to inform the Court of.

23 Section 1001, and I am quoting, says "Anyone who
24 knowingly and wilfully falsifies, conceals or covers up by any
25 trick, scheme or device a material fact or makes any false,

fictitious or fraudulent statement or representation."

It is our position with respect to 11, and the language of 1001 is certainly different from 1623, that Mr. Stoller was engaged in a trick, a scheme and a device to falsify and he misrepresented the true state of facts.

I think that is the crux of Section 1001. I will go on to Count 12 now, your Honor.

MR. GOULD: I have to make a motion on Count 12 first.

THE COURT: Let him make his motion.

MR. GOULD: As to Count 12, I move to dismiss that. Excuse me. First of all, whatever the law is on Count 11 -- I forgot something here.

Where is the proof of falsity in this case? How has the Government made out a prima facie case?

THE COURT: That is the point I was trying to make a moment ago.

First of all, the questioning was so imprecise here and it shows that we are covering a number of subjects in a very general bland way, and as far as it goes you could say that there is a lot of truth in all of his answers here. They may not be the whole truth, but --

MR. SORKIN: I will narrow it down. Perhaps the answer is to excise part of this.

1 gab-7
2 Let me narrow down what we believe to be the
3 falsity here. The question put, "Do you spend a major part
4 of your time talking to Bank Hofmann, a small or minor part
5 or what part?" At which point Mr. Stoller going on to
6 Page 17 begins --

7 MR. GOULD: You are talking about two different
8 things now. I see. All right.

9 THE COURT: Go ahead.

10 MR. SORKIN: At this point begins a dissertation on
11 how he is, as he says, recompensed by the bank. Sometimes
12 they do and sometimes they don't give him some sort of reward.

13 Then he goes on to say, and here is the crux of
14 this count, "As you understand, these accounts are coded. All
15 the Swiss banks are so. I have no knowledge as to what they
16 do with their clients, but they will tell me, yes, we will go
17 into the situation."

18 The evidence is overwhelming here that Mr. Stoller
19 did know what the clients did in the context of this testi-
20 mony.

21 THE COURT: Sure, he is in bed with a crook named
22 Herbert. I understand your theory.

23 MR. SORKIN: Bonavia. He was getting a percentage
24 Bonavia's profits.

25 THE COURT: I know. As a whole and, generally

1 gab-8

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2 speaking, this is true about Swiss banks.

3 MR. SORKIN: That Stoller would get a percentage
4 of a client's --

5 THE COURT: No, please.

6 MR. SORKIN: I am sorry.

7 THE COURT: The statement here, this is what
8 puzzles me. I understand your position, but it just seems
9 like such a fudgy case under a 1001 "as you understand, these
10 accounts are coded accounts."

11 Generally speaking that is true.

12 "All the Swiss banks are so. That is true. I have
13 no knowledge as to what they do with their clients." Gener-
14 ally speaking, I think that is true. He doesn't know what
15 they do with all their clients.

16 MR. SORKIN: Agreed. In the context of the SEC
17 inquiring about Training With the Pros, the clients engaged
18 in the Training With the Pros offering, to wit, D'Onofrio,
19 Allen, Stoller and Bonavia. I think he perfectly well
20 knew what they did with their clients. He was getting a
21 percentage, 10 per cent from Mr. Bonavia on Bonavia's profits
22 as was Herbert on his profits.

23 He asked D'Onofrio -- back when D'Onofrio opened
24 his account at Bank Hofmann, "Give me 10 per cent of your
25 profits through that account."

1 gab-9
2 Weissinger was also a client as testified to by
3 Bonavia and D'Onofrio of Stoller and Allen. They were
4 getting a percentage of his profits.

5 I think it is clear that he knew very well what
6 the bank did with its clients because he was getting a piece
7 of the action from the bank's clients.

8 Again, your Honor, while I must concede that
9 Bronston is not -- asks for an answer to a specific question,
10 the question must be pointed and the answer must be
11 directed at the question.

12 I think under 1001 we are dealing with a different
13 statute here. I think the law is clear on that.

14 MR. GOULD: I would like to hear a case, your
15 Honor.

16 MR. SORKIN: Gillilard, a Supreme Court case.

17 MR. GOULD: It says when you fudge up --

18 MR. SORKIN: I will give you a quote.

19 MR. GOULD: Give me a quote.

20 MR. SORKIN: "The intent of Congress in formulat-
21 ing Section 1001 was to protect the authorized functions of
22 the various governmental departments from any type of
23 deceptive practise" -- we cite Gillilard. It is in our
24 memo -- "as well as from those who would cheat or mislead it
25 in the administration of its programs," citing United

1 gab-10

2 States against Johnson, which is an Eighth Circuit case.

3 MR. GOULD: That we are expected to believe is the
4 substitute for examiner asking Mr. Stoller the question, do
5 you know anything about the relationship of Bonavia to the
6 Swiss bank? Do you know anything --

7 MR. SORKIN: That is not --

8 MR. GOULD: That is what I would have done in
9 my pristine ignorance if I were examining the man.

10 THE COURT: All right, gentlemen. I get the point.

11 Let's turn to Count 12.

12 MR. GOULD: As to Count 12, your Honor, that is
13 the one where Stoller is indicted here for saying he first
14 heard of Training With the Pros from D'Onofrio who said it
15 looked interesting.

16 Then he is asked whether D'Onofrio said anything
17 else and Stoller said "Nothing of any consequence."

18 Patently I will agree, a non-responsive answer,
19 but a characterization on his part.

20 How do they show that to be false? If they
21 wanted to prosecute a man for a false statement there, I would
22 suggest he has to be pinned down. In any event, he amplifies
23 the answer. He then goes on to say, D'Onofrio brought him
24 into the company, introduced him to Moss, pointed out what
25 D'Onofrio had told him, that Training With the Pros was

1 gab-11
2 filing its Reg. A.

3 Then he is asked a question and he says he is not
4 in a position to make a commitment as to what Mr. D'Onofrio
5 does for a living.

6 Well now, in that last one I must sympathize with
7 him. I don't think anybody in the world could have made
8 that commitment.

9 THE COURT: I am inclined to agree with that. Even
10 if, you know, believing all the Government's witnesses, most
11 particularly D'Onofrio, I am not so sure I want to commit myself
12 as to exactly what D'Onofrio does for a living.

13 MR. GOULD: Look what the man does, your Honor.
14 He says "Question: What did D'Onofrio say to you about
15 Training With the Pros outside the statement that it looks
16 interesting?"

17 He says, "Nothing of consequence."

18 They don't follow up on that.

19 This is not a refutation that D'Onofrio didn't
20 say anything else. This is his own judgment, "Nothing of
21 consequence." Then they go on:

22 "What business is he in?"

23 They leave it alone.

24 "What business is Mr. D'Onofrio in?"

25 Here comes an answer. He says, "I'm not trying to

1 be evasive, Mr. Rashes. I have a feeling you know more
2 about Mr. D'Onofrio's business than I do, so I wish we could
3 pass the question."
4

5 Now, if he would stop right there he might be in a
6 little trouble. He goes on. He says, "He has been, I know,
7 with A. T. Brod & Company in the underwriting department. I
8 don't know whether he was head of the department or not. He
9 is also I understand an investor. I believe he may be a
10 financial advisor to certain firms and so on."

11 You can't send people to jail for giving answers
12 like that to that kind of questioning. You have to close
13 up the country.

14 THE COURT: All right.

15 MR. SORKIN: May I be heard on that one, your Honor?
16 Count 12?

17 THE COURT: Yes.

18 MR. SORKIN: Your Honor, I think with respect to
19 the statement "nothing of any consequence," the very least
20 that is so misleading in context of what happened prior to
21 June 20, 1969, it boggles the imagination, going all the
22 way back to June of '68 when they had a meeting at the Baur
23 au Lack Hotel, where they discussed the plan to take a block
24 of the stock in the underwriting.

25 Point 1, your Honor.

gab-13

Point 2, Mr. Bonavia has testified that when he first met Stoller in the fall of '68 Stoller told him, listen, or words to that effect, and I can't use the exact words.

I will tell you the substance.

He said I have met a stock promoter who is as good as I am and he is going to take this stock.

Now, nothing can be more clear when Mr. Bonavia hears from the words of Mr. Stoller that Mr. D'Onofrio --

End 4B

1 qb-1
2 THE COURT: I am beginning to think that Mr.
3 Gould has a point when he says that you are conceiving the
4 argument here in a different context. I understand your
5 position after the fact of the testimony. What I am concerned
6 about is that first of all the questions are extremely
7 fudgy.

8 Second of all, the witness doesn't merely state out
9 and out mistruths. He may have not revealed a lot of
10 information but he wasn't really asked to. This whole thing
11 just seems too ephemeral, I think Mr. Gould probably has a
12 point. If you can get convicted under a 1001 for this kind
13 of question and answer, we are all in trouble, mostly
14 lawyers.

15 We are the greatest fudgers in all the land. I
16 don't buy this. I agree with you, sure, in hindsight, par-
17 ticularly it is easy to see that taking your version of the
18 events that you would feel this way because he was certainly
19 not volunteering anything. Maybe even he was fudging a
20 little bit himself.

21 But, my heavens, he was allowed to fudge. Nobody
22 asked him any compelling questions.

23 MR. GOULD: I would agree the antidote for
24 fudging is a little professional skill on the part of the
25 interrogator.

1 qb-2

2 THE COURT: Count 13.

3 MR. GOULD: Count 13, I will borrow his phrase,
4 this boggles the mind.

5 Stoller was asked whether he had been guaranteed
6 a profit. That is the way it is put, "Were you guaranteed a
7 profit."

8 "Mr. Stoller, were you guaranteed a profit?"

9 Now Mr. Stoller answers with a dissertation, "The
10 word 'guarantee' Mr. Kelly is a funny kind of word."

11 THE COURT: Don't read it to me, I can read, please.

12 MR. GOULD: Then he goes on and there is a long
13 thing here, you know. In effect he says I don't know whether
14 I was or wasn't, I will tell you what happened and he goes
15 on to tell him what happened. What is false about that
16 part of it? We will come to the rest of it later. What is
17 possibly false about that? Where is the proof in this
18 case that Stoller by anybody was guaranteed a profit aside
19 from its inherent substantive invalidity? Where is the
20 prima facie case of perjury with respect to that?

21 THE COURT: Let me hear from Mr. Ira Sorkin.

22 MR. SORKIN: With respect to 13, your Honor, I
23 think the whole answer is a lie. It is false. It is a
24 complete denial of the terms of the manipulation of the
25 agreement between D'Onofrio and the other co-conspirators

1 qb-3

2 including Stoller to acquire the block of stock. There
3 was no agreement that the bank had asked me to secure stock
4 for them. That is a lot of baloney. The bank never asked
5 to secure stock. They were going to get the stock and put
6 it in their secret accounts. There is no evidence in this
7 case that the bank had come to him as agent, and asked him
8 to secure stock.

9 The use of the indication letter --

10 THE COURT: Wait a minute. You were doing fine
11 until you said that.

12 MR. SORKIN: I realized that in the middle of my
13 sentence, your Honor.

14 MR. GOULD: I did too.

15 MR. SORKIN: There is nothing to indicate here,
16 your Honor, from the testimony of D'Onofrio and from the
17 testimony of Bonavia that Stoller in any way was asked by the
18 bank to secure stock. What is here is Stoller and
19 D'Onofrio and Allen and Pfingst agreeing and later on Mr.
20 Frank, agreeing first before Frank comes in to send this
21 phony indication letter, and then after the indication letter
22 is thrown out the window an agreement to look, we will use
23 nominees to take the stock and we will buy it back right
24 after the effective date and put it in Gypsy, Shirley and
25 Erika. That is what it is. The whole answer, particularly

1 qb-4

2 emphasizing the bank asking me to secure stock, is false and
3 Mr. Stoller knew it was false when he said it.

4 MR. GOULD: I gather all they are relying on
5 is the statement the bank asked me to secure stock for
6 them. If that is so then their own evidence in this case
7 negates it.

8 They put in that exhibit, the so-called indication
9 letter back in October of '68 or something like that. Are
10 they telling us now that you are not supposed to believe that?

11 MR. SORKIN: Mr. D'Onofrio testified that was part
12 of the plan, to do it the same way they had done a previous
13 deal, to send an indication letter. Only after they had gone
14 to see Mr. Frank with the indication letter did they find
15 out they can't do that because Training wasn't a public
16 company.

17 MR. GOULD: We don't have the burden of showing
18 what was true or false here.

19 MR. SORKIN: There is testimony from Mr. D'Onofrio
20 that they planned to send this indication letter.

21 MR. GOULD: Now we come to the rest of the count.
22 Mr. Stoller, are you acting as an agent and so on. I would
23 like to know what it is the Government says is false there.
24 I think every word of that is true.

25 MR. SORKIN: I have lost you.

1 qb-5

2 MR. GOULD: The rest of what you indict him for
3 here from the words "Mr. Stoller, are you acting as an agent
4 for the bank or on your own behalf," Page 19.

5 MR. SORKIN: All right, I am sorry.

6 MR. GOULD: What is wrong with that? There
7 isn't a word there that on the Government's own proof isn't
8 completely true.

9 THE COURT: In other words, Mr. Sorkin, if you
10 look in the middle of Page 19 beginning with the question,
11 "Mr. Stoller, are you acting," and so on, do you really claim
12 that is false?

13 MR. SORKIN: "Are you acting," we claim that the
14 next paragraph "now the bank agreed that if I purchased
15 the stock at a price they had no way of knowing that they
16 would rebuy or buy the stock from me at 10. They afforded
17 me what I considered to be a sensible profit."

18 There has been testimony from D'Onofrio that that
19 was just a device to impress the SEC to get receipts from
20 the bank to show that they sold it to the bank at 10 and they
21 could come back and show these receipts when, in fact, they
22 were really selling it to their own accounts.

23 If your Honor wishes we can find the testimony
24 on that particular point. I recall when Mr. D'Onofrio
25 spoke to Mr. Ballmer he said, "Look Marty" -- referring to

1 qb-6

2 Mr. Frank --"advised us to get receipts, prepare the papers
3 and make it look like we were selling it to the bank,"
4 when in fact the \$10 was money coming out of their own account.

5 THE COURT: Let's go to Count 14.

6 MR. GOULD: Count 14 is the one in which they
7 recite the testimony of Stoller --

8 MR. SORKIN: There is one more part of 20 which
9 we maintain is false.

10 MR. GOULD: Suppose you tell us what is false.
11 I thought it was consistent.

12 MR. SORKIN: "When you say repaid, you paid them
13 for it," "I paid it for them. I then resold it to negotia-
14 tion on the bank on the price of ten."

15 MR. GOULD: That is the proof.

16 MR. SORKIN: There is no proof that there was any
17 negotiation with the bank. What the proof shows is that the
18 \$10 was merely an artificial price. The money came from
19 their account, Gypsy, Shirley and Erika and they really paid
20 themselves. They didn't sell it to the bank and there is
21 testimony on that in Mr. D'Onofrio's statement in his con-
22 versations with Mr. Frank and Mr. Ballmer.

23 THE COURT: Let's go to Count 14.

24 MR. GOULD: That is where we get tied up. Stoller
25

1 qb-7

2 said there that after the transaction with Hofmann he neither
3 owned or had a financial interest in any share of TWP. I
4 would like to know where there is any proof that he did own
5 or have any interest in shares of Training With the Pros.
6 Even if you take every word of D'Onofrio's testimony, there
7 isn't a single word that shows that Stoller at any time
8 owned a share or had an interest in a share. He did say,
9 we looked at Page 226 of a transcript, D'Onofrio said that
10 there came a time when he and Stoller went to Switzerland
11 and instructed Herbert to do a cross. Then he said it
12 was crossed in Gypsy, Shirley and Erika to so on, there is
13 no proof as to who that was and in plain English, there is
14 no proof that Stoller did own a share or had any interest
15 in a share.

16 It has got to fall on that.

17 MR. SORKIN: The evidence is overwhelming that
18 Erika was Allen, Shirley was Stoller and Gypsy was D'Onofrio,
19 and that the cross was made from their three accounts to Barbin
20 and to Pompeii.

21 D'Onofrio said there were 18,000 plus. It was
22 split down the middle. Bonavia comes in and says he got
23 9100, multiplied by 2, that is 18,000.

24 Bonavia said later on he had conversations with
25 Stoller and Stoller admitted yes, it came from my account,

qb-8

1 what are you going to do about it? That was the meeting
2 at the Waldorf.
3

4 Again, Mr. Stoller in creating this fix --

5 THE COURT: Never mind.

6 15.

7 MR. GOULD: 15 is the one on the indication letter.

8 There Stoller said I had no knowledge of this letter. I
9 assume that is what they contend was false. We have looked
10 at the D'Onofrio testimony carefully. I cannot find one
11 word which suggests that he discussed this letter with
12 Stoller at any time before it was sent.

13 MR. SORKIN: Your Honor, the meeting with Mr.
14 Frank in November when they are sitting there and Mr.
15 Stoller hands the letter to Mr. Frank and says look, we are
16 doing it like the other deal, here is the letter, and Frank
17 expletive deleted says, you can't do it that way.

18 MR. GOULD: That is a month after the event. The
19 false testimony is, "I had no knowledge of this letter."
20 There is not any evidence to refute that answer.

21 MR. SORKIN: There is from Mr. D'Onofrio. I
22 believe --

23 MR. GOULD: Show me. We went through it word by
24 word. Show me one word from D'Onofrio that Stoller knew
25 about the sending of the letter. I suggest it is not there.

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MR. SORKIN: I can't answer Mr. Gould now.

MR. GOULD: Sure you can't.

MR. SORKIN: I would like the opportunity to review Mr. D'Onofrio's direct and cross and see if there is any reference to that. That is the nub of Count 15.

THE COURT: Because it is the nub I wish you would check. He represents they have gone through it step by step. I don't seem to have any notes that unequivocally corroborate your version, Mr. Sorkin, but that may be my fault in my notations.

MR. SORKIN: If that is the case I would concede he had no knowledge of the sending of the letter. If it is not in there, that is. I believe your Honor and Mr. Gould are perfectly correct, however, I am not so sure though as an alternative argument when he is asked did you cause that letter to be sent, the answer I have no knowledge of the letter, I think he did have knowledge of the letter.

THE COURT: That is what we are asking. I don't recall any testimony myself indicating that he did. But you say otherwise.

MR. SORKIN: Did have knowledge or did send it?

THE COURT: Knowledge. You have to stick with what is here. You can't change his testimony.

MR. GOULD: You have to read the question with

1 qb-9

2 the answer:

3 "Q Did you cause that letter to be sent?

4 "A I had no knowledge of this letter." That is
5 literally a negative of the question. Unless they can show
6 that when he said he didn't cause the letter to be sent he was
7 lying, then the count has got to fail for failure of proof.

8 We are not dealing in semantics here. His
9 answer --

10 THE COURT: I said I agree with you, Mr. Gould.
11 want to give him a chance to check.

12 MR. SORKIN: On Page 169, the bottom of 168, the
13 conversation in Mr. Frank's office, the first thing that was
14 said was Mr. Stoller --

15 THE COURT: Wait a minute. I have to catch up
16 with you here.

17 MR. GOULD: This is a conversation that is supposed
18 to have taken place at least a month after the letter was sent.

19 THE COURT: Fine. Let me just get the reference.
20 What is it you say here, Page 169?

21 D'Onofrio claims that he in fact sent this letter.

22 MR. GOULD: That is right.

23 MR. SORKIN: I would like the opportunity before
24 y our Honor decides this to review D'Onofrio's testimony.
25

1 qb-10

2 THE COURT: Fair enough.

3 MR. GOULD: Why should he have any more opportunity
4 than I had. We stayed up all night to do our work.

5 MR. SORKIN: I understand that, Mr. Gould.

6 THE COURT: You have until after lunch.

7 MR. SORKIN: Thank you.

8 THE COURT: You have a lot of assistants and they
9 all look very handsome, but they don't seem to be doing much
10 when they are in court. May I suggest they could properly
11 leave court if they would like to.

12 Count 16.

13 MR. GOULD: Mr. Stoller, do you know Allen, and he
14 says yes. I don't suppose they allege that is false.

15 Do you know if Allen owns any stock of Training
16 With the Pros? I have no knowledge. Not a scintilla
17 of proof that he has any knowledge that Allen owns any stock.
18 That is what he is asked and that is what he answers. There
19 is no proof here.

20 Do you know if D'Onofrio owns or owned at any
21 time, and now comes a typically Stollerarian response, he
22 says, "I have no knowledge. All that baloney that is there."

23 What is false about that? It is not nice. He
24 should have been more polite to the fellow, but what
25 is false about it?

1 MR. SORKIN: This is what is false. Number 1, he
2 knew that D'Onofrio owned stock at any time, yes, he did.
3 He knew D'Onofrio owned stock when he got it back from his
4 nominees, when they went over to Switzerland to put the stock
5 in their secret accounts back in February, when the stock
6 was crossed from Gypsy, Shirley and Erika into Barbin and
7 Pompeii. He knew that. He was pressed, your Honor, on this
8 particular count.
9

10 He was pressed, what do you mean by you have no
11 knowledge, they were pinning him down and Mr. Stoller again
12 gets what I think is the heart of Section 1001, misleading,
13 evasive, not answering and concealing the very fact that
14 he knew at one time that D'Onofrio owned stock in Training
15 With the Pros.

16 If Mr. Gould wants him pinned down he is pinned
17 down.

18 MR. GOULD: Look how he is pinned down, Judge?
19 He is asked this stupid question, stupid.

20 THE COURT: Are you conceding that the question
21 isn't really falsely answered in respect to Allen?

22 MR. SORKIN: Yes, we are conceding that. There is
23 no problem with that. Our argument is the next question, do
24 you know if Mr. D'Onofrio owns or owned at any time.

25 THE COURT: Why do you throw out all this garbage

on Allen?

MR. SORKIN: Perhaps in drafting it to put it all in context he asked Allen and he asked D'Onofrio. That should be stricken. We concede that, as should be stricken a number of other paragraphs in the other counts. We concede that.

THE COURT: We haven't conceded it up to now.

MR. SORKIN: I thought we indicated quite clearly there are certain paragraphs on Counts 11 through 16 which are patently false.

THE COURT: Here we are in Alice's garden again. You just said that you conceded that certain paragraphs and sentences in the previous false statement counts should have been stricken. I never heard of this before. Maybe Mr. Gould did, but I never heard it.

MR. SORKIN: Let me put it this way: In drafting the counts we put the entire answer in. Certain parts of the answer without deleting the entire answer are false. Some parts are true and some parts are false.

MR. GOULD: I am glad Mr. Sorkin is not being tried in the court for the accuracy of what he just said because it happens to be completely untrue.

MR. SORKIN: I would be very happy before lunch is through to lay out for you the exact portions of the answer which we claim are false. We didn't want to cut answers

1 qb-13
2 apart because we would be accused of breaking apart the
3 answer. That has been done once before. We put the entire
4 answer in.

5 MR. GOULD: What are these asterisks doing here
6 if you are not cutting answers apart?

7 MR. SORKIN: That is not an answer. Every answer
8 he gives is a complete answer.

9 MR. GOULD: It isn't so and he won't be able to
10 demonstrate it when he has the opportunity. Let me address
11 myself to what he is talking about. When he gets right down
12 to this count, your Honor, either the count is good or bad
13 and that depends on the answer to this question, "Do you
14 know if D'Onofrio owns or owned any stock at any time?"

15 And if the man answered no, we would probably
16 be in trouble with it. He says, "I have no knowledge," and
17 he goes on with this nonsense about what he means by that.
18 Now comes Mr. Sorkin and he says to your Honor, "Oh, he
19 was pinned down and look at the skilfull way in which he
20 was pinned down, this St. Thomas Aquinos that was interrogating
21 him says to him, "When you say absolute sense would you
22 clarify that," and a man is supposed to go to jail for his
23 answer to that pieceof nonsense.

24 It is ridiculous. I don't want to say any more
25 about the count. The count can't stand because there wasn't

a question to which any sensible human being could give an answer.

MR. SORKIN: Nothing could be more clear than Mr. Stoller being asked, did Mr. D'Onofrio own any at any time, and Mr. Stoller says, I have no knowledge. That is what he was asked.

THE COURT: Gentlemen, I am going to rule as follows: First of all, I am going to direct an acquittal of Philip Stoller in respect to Counts 11 and 12. My own view is that those things are so fudgy, both in terms of questions and also in answers, because they are at least partially true. Therefore, I think for those simple reasons a Court has no choice but to direct an acquittal because it just isn't that sufficiently clear, precise and compelling to let the matter go to a jury under any kind of instructions that could be regarded as helpful or proper.

I am going to reserve decision on Counts 13, 14, 15 and 16 for two reasons: (1), the Government now tells defense counsel and the Court that they intend to edit these counts in some way and delete certain materials. I think the defendant is entitled to know what is being deleted so he can make his final argument. I think the Court is entitled to know so that we know what we are dealing on as far as the Judge is concerned.

qb-15

1
2 Finally, I submit that under Count 15 I am
3 convinced so far that the defendant has the better of it
4 unless you can come up with something better than D'Onofrio's
5 remarks at 169, which don't prove any knowledge on the part
6 of Stoller except perhaps after the event which even that
7 isn't clear.

8 That is where D'Onofrio says that he and the
9 inestimable Pfingst were the ones who did this. But I will
10 give you a chance on that. Even though I agree with Mr.
11 Gould, I don't know why you hadn't thought about this one
12 before, particularly in regard to these false statement counts
13 which present their own problems in responsibility.

14 I take it, Mr. Gould, we are going to take a
15 short recess to let everybody, most importantly the court
16 reporter, get his breath here. But you now want to turn to the
17 obstruction count?

18 MR. GOULD: Yes, your Honor.

19 THE COURT: Fair enough.

20 MR. GOULD: I will be very brief on that.

21 End 5A
22
23
24
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2 THE COURT: I am not criticizing. I just want to
3 go back and make sure.

4 Mr. Sorkin, we are going to have answers at 2:15
5 without a doubt.

6 MR. SORKIN: I certainly will.

7 THE COURT: Time is running out on us for any
8 more extensions. We can't have that.

9 (Recess.)

10 MR. GOULD: Your Honor, with respect to Count 1 --

11 THE COURT: Just a moment. I want to finish some-
12 thing here.

13 MR. GOULD: Excuse me.

14 THE COURT: Now you want to turn to Count 1 of
15 the obstruction indictment.

16 MR. GOULD: That is right. Count 1 of the
17 indictment 74 Criminal 763 which is consolidated here,
18 we move to dismiss Count 1.

19 THE COURT: I'm sorry, I have so many pieces of
20 paper in this case that I can't find it.

21 MR. FELDSHUH: May I interrupt for one moment.
22 During the recess Mr. Sorkin and I had a colloquy wherein
23 the Government proposes as to this indictment to dismiss
24 or to consent to a dismissal of Counts 1 and 3 against the
25 Defendant Frank. That would save considerable time in argu-

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2 ment. Counts 1 and 3 are the only ones which charge Mr.
3 Frank at all.

4 THE COURT: All right. We will get to that in a
5 moment. Go ahead, Mr. Gould.

6 MR. GOULD: I move to dismiss Count 1. That
7 is the one where they allege that Stoller and Frank
8 corruptly tried to give money to Allen to influence him
9 not to return to the United States from Switzerland to
10 testify and when he came back Stoller and Frank offered
11 Allen money and transportation to enable him to go to
12 Panama and the Bahamas.

13 I move to dismiss that on the grounds that there
14 is a complete failure of proof. Where is the evidence?
15 I don't know of any evidence in this case to that effect.
16 Apparently it was written at a time when it was anticipated
17 that Mr. Allen would be here and would testify to those
18 facts and I don't see how it can stand in Allen's absence.
19 There is nothing in the case.

20 THE COURT: I would agree offhand, Mr. Sorkin.
21 I know that Feeney mentioned some discussion about this.
22 It was a rather vague discussion. I don't recall it
23 was rather compelling, do you?

24 MR. SORKIN: I agree with respect to what Mr.
25 Gould has said with respect to the count where it begins,

"And thereafter by offering Jerome Allen when he returned voluntarily," I agree there is no evidence that post-indictment there was any attempt.

However, I respectfully disagree that the issue of whether Mr. Stoller's conversations in the hotel at the Eden au Lac among Feeney, Allen and Herbert and the ride out to the airport and the conversation that Feeney had with Stoller when they came back to the United States, I think that is a question for the jury whether or not Mr. Stoller was in the process of making loans and payments to Mr. Allen to keep him in Switzerland to keep him happy. I think the entire discussion at the Eden au Lac was what is going to happen when the indictments come down, we are going to have to think of the swimming pool. We are going to have to go to Panama.

I think the entire conversation there among Feeney and the others clearly relates to the first part of Count No. 1 of '74 Cr. 763 and quite rightly as Mr. Gould says not to the second part. We don't have evidence frankly, your Honor, of any attempts after Mr. Allen returned.

I think the Count is sustained on the first part of it.

MR. GOULD: It says here in the indictment that he

1 offered money. He is charged with corruptly endeavoring
2 to influence, by among other things, offering money.
3 There is no shred of evidence about that. The conversations
4 he is talking about are free speech. You can't send
5 people to jail for talking about things like that.

6
7 MR. SORKIN: No one is sending him to jail. I
8 think the conversation to Feeney was that he was paying Allen
9 to stay overseas.

10 MR. GOULD: You better show it to me. We stayed
11 up late looking for it and we can't find it. I think
12 there is a complete failure of proof on the count until
13 they show us something that we can't find. I move to
14 dismiss that one.

15 THE COURT: All right. Count 2.

16 MR. GOULD: Count 2 is the one where it is claimed
17 that he was trying to influence and intimidate Allen,
18 the prospective witness, by threatening him with physical
19 harm and death. I think that is a matter of law, that
20 is the testimony of this lady, and the same is true of
21 the other count. Those don't amount to threats.

22 MR. SORKIN: What about the testimony with respect
23 to Mr. Bregman, your Honor? Clearly there is no threat
24 on Mr. Allen's life but the count also says, and I think
25 I am reading it correctly, endeavor to intimidate Jerome

Allen, a prospective witness by, among other things --

MR. GOULD: Where is this intimidation?

MR. SORKIN: Count 2.

MR. GOULD: Endeavor to influence and intimidate him -- is it to be the law that a man violates the law if he goes to a prospective witness against him and he says to him that is a terrible, rotten thing you are doing. You are a bad man. You are all kinds of dirty words and he says it in a loud voice with his fist raised in the air and he honestly believes that the object of this intimidation is an evil man doing an evil thing. That is obstruction of justice?

MR. SORKIN: That is not my recollection. My recollection is that Mr. Stoller called Mr. Bregman on the telephone and told Mr. Bregman that if Mr. Allen testifies he is going to bring up the fact that Mr. Allen had a homosexual relationship with someone from Revlon and he is going to bring up Mr. Allen's sexual life.

MR. GOULD: What is wrong with that?

MR. SORKIN: Quite frankly, that coupled with the statements of Mrs. Allen and to Allen's son, I think it is a question of fact for the jury to decide whether all of these things constitute intimidation and influence Allen not to testify.

MR. GOULD: All that we get out of the

2 Bregman conversation is he says to the man's lawyer
3 if your client testifies against me you for him and he
4 for himself better take into account that he is going to
5 be cross examined with respect to the kind of life he has
6 led. I have committed that crime half a dozen times at
7 least in my life. I am sure that Mr. Sorkin has not done
8 that because Mr. Sorkin has higher standards than I have.

9 But if that is intimidation of a witness there is
10 not a lawyer in the world who hasn't committed the crime many
11 times. What is wrong with saying to a man's lawyer, your
12 fellow better take into account that if he goes on that
13 witness stand and he does this thing to me I am going
14 to bring out the fact that he was once a drug addict
15 or that he was convicted of arson, or that he is a homo-
16 sexual. What is wrong with that?

17 MR. SORKIN: Mr. Allen does not have, I am sure,
18 the legal experience of Mr. Gould and to a layman to hear that
19 if he takes the stand some sexual episode in his life,
20 which I don't think would be proper cross examination whether
21 the fact that Mr. Allen was a homosexual or not is proper,
22 but if Mr. Gould seems to think so, that is fine, but to a
23 layman, Mr. Allen, to a layman hearing that his wife gets
24 a phone call from Mr. Stoller --

25 MR. GOULD: Talk about one at a time.

2 The threat on Bregman, the threat on Allen about the homo-
3 sexual stuff wasn't made to Allen, it was made to Bregman,
4 the lawyer. It is a layman talking to a lawyer. The lawyer
5 should have said to him, assuming he had as much scholarship
6 as Mr. Sorkin has demonstrated, that wouldn't be proper
7 cross examination, you couldn't do it.

8 THE COURT: How about Count 3?

9 MR. GOULD: Count 3 --

10 THE COURT: The affidavit.

11 MR. SORKIN: I think we can save time with
12 respect to that.

13 THE COURT: There is no evidence that Stoller had
14 anything to do with this at all.

MR. SORKIN: I indicated to Mr. Gould at the break
16 that we would consent to dismiss all of that count.

17 THE COURT: While we are on the subject, you con-
18 sent to a dismissal of Count 3 as against the Defendant
19 Frank, too. Mr. Feldshuh says so.

20 MR. SORKIN: Yes, I do. I ask the Court at this
21 time, although it may not be the proper time, I think
22 the Frank affidavit which Bregman introduced was taken subject
23 to connection.

24 THE COURT: That is right. I was just looking
25 at that. That is quite correct.

2 MR. SORKIN: I think it is Exhibit 43.

3 MR. GOULD: I suppose you can consent that it be
4 stricken.

5 MR. SORKIN: It's 42-A, your Honor. I have it
6 here.

7 THE COURT: September 19th Mr. Bregman testified.
8 42-A was received subject to connection under the Count 3
9 of the obstruction indictment and since on Count 3 an
10 acquittal of both Frank and Stoller is being directed,
11 Count 3 of 74 Cr. 763, it follows, as I see it, the Court
12 should strike Government's 42-A from the record, at least
13 so far as the jury is concerned.

14 MR. SORKIN: There is one other matter and I
15 really ask the Court's guidance on how to handle this.
16 We have indicated in our opening statement, obviously
17 which is not evidence and the Court has instructed to the
18 jury that it is not, that we intended to introduce a tape.

19 THE COURT: This is a common garden variety
20 problem. The Court constantly strikes evidence.

21 MR. SORKIN: We would ask your Honor in his
22 instructions to the jury to instruct them --

23 THE COURT: We are not with the jury yet. Let's
24 not raise that now.

25 MR. SORKIN: Very well.

1 THE COURT: This is not, I must say, a unique
2 problem, Mr. Sorkin, as a practical matter.

3 MR. SORKIN: I am aware of that.

4 THE COURT: The Government, as I see it, also
5 apparently, according to Mr. Feldshuh, has agreed to
6 consent to a direction of acquittal of Frank under Count 1
7 of 74 Cr. 763.

8 MR. SORKIN: That is correct.

9 THE COURT: Let me make my rulings as follows:

10 Counts 1, 2 and 3 are dismissed or rather I am
11 ruling that the Court must direct an acquittal of both
12 defendants on all three of the obstruction counts. The
13 United States of course has consented to such a ruling with
14 respect to Frank under Counts 1 and 3.

15 However, this leaves Stoller at least in respect
16 to Counts 1 and 2. The Government also having conceded
17 that there is no proof that Stoller had anything to do
18 with the Frank affidavit and therefore, of course, consented
19 to an acquittal of Stoller under Count 3. The debate has
20 centered on Counts 1 and 2 of this particular indictment
21 as centering upon Stoller.

22 In regard to Count 1, I do not believe there is
23 any satisfactory evidence that Stoller offered money to
24 Allen. Well, I am frank to say, Mr. Sorkin, I can't
25

2 bifurcate Count 1 the way you do. I just don't think
3 it is susceptible of that bifurcation. As I read this,
4 this is an accusation that Stoller arranged monies to have
5 Allen go to Panama or the Bahamas or both so that he would
6 not be available to testify in the United States District
7 Court here.

8 The only evidence in the record I know that re-
9 motely touches on that subject is that of Feeney. Now
10 Feeney's testimony is very interesting. Feeney's
11 testimony, assuming it is to be believed and of course at
12 this point it is, is that he is sitting in one of these
13 hotels in Zurich. September 23, 1974, toward the end
14 of his direct, in the fall of 1973 he says he met Stoller
15 at the Nova Park Hotel in Zurich, that Allen and
16 Herbert were there and that Allen said he would not
17 return to the United States and face charges that Stoller
18 was lending him money and Herbert was agreeing to help
19 him start up a financial paper.

20 And also Herbert was going to get some man who
21 was a friend of his in Bern to falsely update his passport.
22 Then Stoller says, accordin to Feeney, that he was going
23 to the Bahamas and asked him if he wanted to go to the Bahamas
24 because he, Feeney, was here under indictment. That does
25 not sound to me like obstruction of justice. This sounds

to me like a bunch of boys sitting around the hall talking to each other about wonders they were going to do which may be yes and may be no.

MR. SORKIN: I ask the Court to look a little further, page 1269, where Mr. Stoller says now e have got Jerry over here he is not going to talk. Then going on to the next thing when was the next conversation you had with Mr. Stoller, of course going out to the airport, what was said and he says we discussed the Bahamas, we discussed keeping quiet and not talking as a possible refuge if we had these indictments and on 1271 there is a discussion of Mr. Allen asking Mr. Stoller about the money he was going to lend him and Mr. Stoller said to Allen I have to go back to the United States.

Then he says he didn't see why Phil couldn't give him the money then.

THE COURT: As a matter of fact, all that does is hurt the Government. That doesn't help it. That is a bunch of the boys talking it up. There is one thing the Government has proved. These guys were one of the most gabby bunch of big talkers known to man. That doesn't prove this count.

MR. SORKIN: Very well, your Honor. We intend to argue to the jury with respect to this conversation.

1 THE COURT: No Court can fall for that one. The
2 only reasonable appraisal seems to speak for innocence.
3 How can you possibly as a matter of law meet your burden
4 no matter what you say to the poor jury?
5

6 MR. SORKIN: We take a different interpretation
7 as to this indictment. I am not arguing --

8 THE COURT: I am taking Feeney as telling the
9 truth. All he is doing is saying something quite different
10 to Count 1.

11 MR. SORKIN: I am not arguing on the obstruction
12 count. What I am saying is notwithstanding the dismissal
13 of Count 1 we intend to interpret --

14 THE COURT: We haven't gotten to that yet.
15 No wonder we are confused here. I am talking about
16 oranges and you are talking about plums. I might say rather
17 raunchy plums at that.

18 Let's stick to this argument, Mr. Sorkin. We
19 are talking about the first count of the obstruction
20 indictment, 74 Cr. 763, Stoller, right?

21 MR. SORKIN: Correct.

22 THE COURT: I am sorry, but I am going to grant
23 the motion of Stoller to direct an acquittal of him because
24 the Government's proof is quite to a different end than the
25 allegations in this count. I will say no more.

1
2 Now we turn to Count 2. Again, I believe there
3 is a failure of proof here. I was mystified, as I told
4 you, and I am still mystified as to why the Government
5 in light of Count 2 and its allegations contained therein
6 would want to introduce into evidence the tape. Because
7 the tape takes all the sting out of this thing.

8 You know, the boobala conversation.

9 MR. SORKIN: I am aware of that. Isn't that
10 a question of fact, your Honor?

11 THE COURT: No judge could responsibly put
12 that garbage to the jury. I realize the dear lady
13 was upset. I realize what the son said but it wasn't
14 very compelling. Even assuming that Stoller, who apparently
15 is perfectly capable as 90 per cent of American males are
16 of using four letter words most of the time, comes in and
17 says to Boobala all the things he says to him in the
18 incomparable dialect of the five towns, what does that
19 prove?

20 MR. SORKIN: I still fail to see how the testimony --

21 THE COURT: Obstruction of justice?

22 MR. SORKIN: -- how the testimony of Bregman
23 and the two Allens could be disregarded with respect to
24 these two counts.

25 THE COURT: Mr. Gould made the point. Bregman

1 is a lawyer. Are you charging Bregman with aiding and
2 abetting Stoller here?
3

4 MR. SORKIN: No, I am not, on the contrary.
5 What I am saying is that Mr. Stoller's allegations and
6 statements to Mr. Bregman are clearly an attempt to keep
7 Mr. Allen off the witness stand.

8 THE COURT: Mr. Sorkin, when you go out to
9 practice law, if you ever do, if you come in and tell me
10 that a conversation to you represents a threat to your
11 client, I am going to then go over in a corner and get in
12 a fetal position and prepare for doom. This to me is
13 ridiculous. I have heard more ridiculous arguments this
14 morning, not exclusively from you -- your friends did a
15 good job on that business of prejudice because of Moss,
16 but let's not try to outdo them in this kind of thing.

17 Listen, the testimony is, on this count, the tapes,
18 the testimony of poor Mrs. Allen and her son. But taking
19 their testimony -- well, let me take it chronologically.
20 They received the calls during the day on March 6th when
21 our friend Jerry Allen is out galivanting out in the streets
22 up to -- I don't even want to know. Then the conversation
23 comes back.

24 He calls Mr. Doonan and tells Doonan he is in
25 fear. Allen is in fear of everything. Allen is always in

1 fear. He is in fear of his lawyers. He is in fear of you
2 now. You and Doonan are now killers. Look, I have got to
3 be realistic, Mr. Sorkin. But if you don't accept that
4 as business being outside the record, and I agree it is
5 outside this record, then we come to the phone call.
6

7 Doonan does his duty. He goes up to protect this
8 cuddly little fellow. He goes into the apartment.
9 With alacrity he hooks up the Sony receiver and good old
10 Stoller, who has been proved beyond a reasonable doubt
11 to have a cute case of telephonitis throughout the whole
12 relevant period, calls. We listen to that. Forget the
13 transcript, that doesn't help us much. What a conversation.
14 This is obstruction of justice? No reasonable man
15 should be in fear of anything after listening to boobala.

16 Need I say more?

17 Count 2 is dismissed or more accurately I direct
18 an acquittal of Philip Stoller. I am not putting any
19 medals on Stoller or Allen for this foolishness.
20 They should go hide their heads in shame for this kind
21 of stuff but it isn't a crime.

22 Mr. Gould, we turn now to the indictment which we
23 know as 74 Cr. 159, correct?

24 MR. GOULD: Correct.

25 I would like to make a suggestion about that.

2 Since we are not going to be able to finish this matter
3 this morning and since I will be very much helped if I knew
4 what the Government's decision was on the other counts
5 why don't we recess now, if that suits your Honor's convenience
6 and meet again at 1:30 or a quarter of 2:00 and let me
7 argue that motion then, which will give you a chance to
8 regroup my papers.

9 THE COURT: I don't object to that. I would
10 like to give Mr. Sorkin until a quarter of 2:00 which is
11 what I had in mind originally so he can delve out this
12 material and edify you and me and everybody else.

13 MR. GOULD: That would help me a lot.

14 Thank you very much, your Honor.

15 (Luncheon recess.)
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AFTERNOON SESSION

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2:00 p.m.

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(In open court, jury absent.)

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THE COURT: Gentlemen, I apologize. I have been caught in our elevator which is broken down and I lost us ten minutes in the bargain.

7

8

We turn to the basic conspiracy count here.

9

10

MR. GOULD: Weren't we going to get Mr. Sorkin's sessions first?

11

12

THE COURT: I beg your pardon. We are supposed to get his views.

13

14

15

MR. SORKIN: I think your Honor asked us about 13, 14, 15 and 16. I will address my attention to 13 first.

16

17

We would read, your Honor, right from the beginning of the count.

18

"Mr. Stoller, were you guaranteed a profit?"

19

20

21

THE COURT: Wait a minute, Mr. Sorkin. What does all this mean, please? Are we dealing with Count 11? Are you rewriting it now?

22

23

24

MR. SORKIN: I thought you dismissed 11 and 12, your Honor and told us to deal with 13 through 16. I'm sorry.

25

THE COURT: I thought you were talking about

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2 Count 11. I either don't hear you or you make no sense.
3 I agree with you, I did.

4 MR. SORKIN: I'm sorry. I thought I said Count
5 13, your Honor.

6 THE COURT: Maybe I misheard you.

7 MR. SORKIN: I think your Honor asked us to please
8 point out what we allege to be false.

9 THE COURT: No, no. You said in open court, and
10 again maybe I hear so many astonishing things from you
11 in this case that maybe I'm doing you a disservice, but
12 I understood you to say half way through the morning
13 that you felt that certain matters should be excluded
14 from these various counts.

15 MR. SORKIN: I will say what should be excluded.
16 I was going to say what should be included.

17 THE COURT: Somehow Mr. Gould and I have got to
18 know what we are dealing with here before we can resolve
19 this problem.

20 MR. SORKIN: I understand that, your Honor.
21 I was directing my attention to what we think should be
22 included in the count and that only.

23 THE COURT: All right. We will take it on that
24 basis and see what happens.

25 MR. SORKIN: What we think should be included,

your Honor, is the question to the bottom of page 18 and starting on page 19 where Mr. Stoller says, "The bank had asked me to secure stock for them."

THE COURT: In other words, that is the end of that count?

MR. SORKIN: No. We also ask the next question, "Mr. Stoller, are you acting as an agent, " and we would include under that count also the paragraph, "Now the bank agreed that if I purchased the stock at a price."

To support this proposition, your Honor --

THE COURT: Wait a minute. I thought I had seen everything in the trial of criminal cases, but once again I know how wrong that is. Let's go back.

In other words, you want to exclude the phraseology, "Up until now Mr. Rashes," and so on.

Can't we do it that way? The way you go on --

MR. SORKIN: All right, your Honor. No, I want to include everything from "The bank had asked me," all the way down to the next question.

THE COURT: I hope, Mr. Gould, you are having more success than I am in following this.

MR. GOULD: I'm at a complete loss, your Honor. I just don't want to exacerbate the situation.

MR. SORKIN: The question begins on page 18, "Mr. Stoller, were you guaranteed a profit?"

I would include all of that on 18 and then go to the sentence on page 19, "The bank had asked me to secure stock," and then go down to the next question where Mr. Stoller is asked, "Are you acting as an agent for the bank?"

THE COURT: May I suggest, Mr. Sorkin, that I'm sorry, I can't give you your head any longer. You have got to tell me what you are willing to exclude. Listening to you is like listening to a badly cracked photograph record. It doesn't mean anything most of the time. I'm sorry.

Take Count 13. What are you saying the Government would be willing to exclude?

MR. SORKIN: I would exclude, your Honor, starting on the top of page 19 and down to and through the word "allotments," which is the first two paragraphs. I would exclude all of that.

THE COURT: All right.

MR. SORKIN: I would then exclude, your Honor, that one paragraph in the middle of the page where it says, towards the middle, near the bottom, "I have gotten to the point where you already have been for some

2 weeks ever since you got all the records from Deetjen
3 & Company."

4 I would then exclude, your Honor, the last sentence
5 on the page.

6 THE COURT: All right.

7 MR. SORKIN: Moving on to page 20, your Honor.

8 I would exclude the second sentence, "I had bill
9 of sales such as these."

10 THE COURT: That is all on that paragraph?

11 MR. SORKIN: Then the next sentence which is
12 not completed ending with the words, "and I sold."

13 THE COURT: In other words, you would exclude all
14 beginning, "I had bill of sales"?

15 MR. SORKIN: Yes, down to the next question.
16 That is correct, your Honor. I would exclude the last para-
17 graph on that page, your Honor.

18 THE COURT: Wait a minute. That brings us into
19 14.

20 MR. SORKIN: The last two paragraphs of that
21 count, your Honor, "Now you mentioned before that I was
22 acting as an agent."

23 THE COURT: Let's turn to Count 14. What would
24 you exclude here?

25 MR. SORKIN: The only thing I would exclude

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2 here, your Honor, is on page 21, the sentence, the last
3 sentence of the count, "If it is what I think it is, they
4 will make a great deal of money."

5 I would exclude that sentence, your Honor.

6 THE COURT: All right.

7 Count 15. You got two problems here. First
8 let's deal with what you would exclude, if anything.

9 MR. SORKIN: Your Honor, I would not exclude any-
10 thing of Count 15.

11 THE COURT: All right.

12 Count 16.

13 MR. SORKIN: Count 16, I would exclude the first
14 question and answer, "Mr. Stoller, do you know a Jerome
15 Allen?

16 "A Yes, I do."

17 I would include the rest of the count.

18 MR. GOULD: I'm sorry, I don't understand this.

19 MR. SORKIN: What I'm saying, Mr. Gould --

20 MR. GOULD: The first question and answer are
21 out?

22 MR. SORKIN: Yes. Then I would include the entire
23 remainder of the count.

24 MR. GOULD: All right.

25 THE COURT: How about Count 15? I don't still know

2 of any evidence which the Government produced that would
3 support this particular count, but you are going to check
4 the record and respond to that.

5 MR. SORKIN: On page 143, your Honor, line 24 --

6 THE COURT: Wait a minute now.

7 (Pause.)

8 MR. GOULD: What line did you say?

9 MR. SORKIN: Line 24.

10 This is the meeting at the Baur au Lac, your Honor.
11 Actually line 22 puts it in context. I would read there-
12 from, "Phil turned to Joe and says," up through line 8 of
13 page 144.

14 MR. GOULD: This is a conversation that is supposed
15 to have taken place after the sending of the letter, isn't
16 it?

17 MR. SORKIN: No, this is a conversation at the
18 Baur au Lac in June of 1968.

19 MR. GOULD: Oh, I see.

20 THE COURT: All right. What do you say, Mr.
21 Gould?

22 MR. GOULD: I don't think this in any way
23 contributes to the alleged knowledge of Stoller about this
24 particular letter. If we take this at its face, back in
25 June, four months before this letter is sent, Pfingst

says something about, "The way we presently intended to handle another stock, we would have the bank give an indication letter."

That doesn't show that Stoller knew anything about this letter. This is not a conspiracy count, this is a perjury count. You have to show this man knew of the existence of this letter, not any old letter relating to any old subject.

THE COURT: It does seem to be rather thin to put it kindly. I suppose the argument would be -- let me have that exhibit, please.

MR. GOULD: Exhibit 4.

THE COURT: This deals with 30,000 shares, and according to D'Onofrio, Pfingst says; we will have the bank give an indication letter for 25,000 shares and so on and so on.

MR. GOULD: Can I suggest one thing on that, your Honor?

You see, here is an allegation. He shows him a specific letter, October 17, 1968. The man says I don't know anything about the letter, alleged to be false.

Now, in support of the truth of the allegation, in negation of what the defendant says, they say, there is evidence that he was once four months earlier a participant

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in a conversation in which a letter was mentioned. It
is not enough.

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2 THE COURT: I tell you what I think is your better
3 argument which you made this morning, although I suppose
4 what you just said casts its light and shadows on this.

5 Look at the question, "Did you cause that letter
6 to be sent?"

7 "I had no knowledge of this letter."

8 MR. GOULD: And that is true as far as this case
9 is concerned.

10 THE COURT: It could well be. That is what is
11 bothersome.

12 MR. SORKIN: What I would point out, your Honor,
13 is that not only does he say, "I had no knowledge of this
14 letter being sent," which he doesn't add -- he simply goes
15 much further and says I had no knowledge of this letter,
16 period, which covers --

17 THE COURT: That could be correct.

18 MR. SORKIN: Which covers everything. He wasn't
19 asked was it to be sent? He says he doesn't know anything
20 about the letter.

21 MR. GOULD: That doesn't help me at all. I think
22 he has asked about a specific letter and he says, "I
23 didn't know about this letter and there is no proof that he
24 knew about this letter, period.

25 THE COURT: Mr. Gould, what do you say about Count

1 gab-2

2 15?

3 MR. GOULD: Let me just go back to it and see
4 what is left off it. Bear with me one second, your Honor.
5 Count 13 is the long one.

6 (Pause.)

7 MR. GOULD: I have to take it in series because
8 it is a number of things, your Honor.

9 On the first one he stands on the question and answer
10 "We were you guaranteed a profit?"

11 Then you get this funny answer of his -- I don't
12 think it is responsive and I don't think there is any way that
13 we can adduce any of the proof in the case so far to make
14 this a negation of what the witness answered. I think what
15 really happened here was that there was a misunderstanding
16 and that when Stoller was asked the question he didn't under-
17 stand it and he started to explain, instead of responding to
18 it, his transactions with the five people who bought the stock
19 and then sold it to him.

20 I think he was being asked whether he, Stoller,
21 had guaranteed a profit. That is what I think he understood
22 it to be. But that is not what the question was.

23 I think all you have here is confusion.

24 There is nothing in the case, your Honor, so far,
25 which indicates that Stoller was guaranteed a profit.

1 gab-3

2 The answer I suggest is unresponsive perhaps to a
3 mistake. There may be a mistake in transcription. I don't
4 see how this can be held to be a criminally false answer
5 to this question.

6 MR. SORKIN: Can I be heard on 13, your Honor?

7 MR. GOULD: Let me finish. That is just the
8 first part.

9 MR. SORKIN: I am sorry.

10 MR. GOULD: Then we take up, "The bank asked me to
11 secure stock for them."

12 This is in response -- I don't see how they can
13 leave that in without some kind of question. See, the ques-
14 tion was, "You told these people" -- you have to go back to
15 the last question and answer on Page 18:

16 "I think you were in the middle of a sentence."

17 "Let's say I told these people."

18 "You told these people," and so on. Then they
19 say, "The bank had asked me to secure stock for them."

20 "Up until now, Mr. Rashes, everything I am telling
21 you, you know, because I got it."

22 Nothing in there is false. I think what they
23 are really putting their emphasis on is the next question and
24 answer:

25 "Mr. Stoller, are you acting as an agent for the

1 gab-4

2 bank or on your own behalf?"

3 Then he answered, "No, I was a principal."

4 First of all, the syntax of the question, the
5 tense of the verb "are you acting," I would have assumed
6 meant do you now, are you in your present --

7 THE COURT: No, the witness obviously --

8 MR. GOULD: He apparently understood it differently.
9 He answered as if they had asked him, were you at that time
10 acting as a principal. I will accept that. That might be
11 a little confusion.

12 Well, the proof is he was acting as a principal.
13 He did buy, he bought, he paid for and then he sold it. So
14 it is literally true.

15 Where is the falsity in it?

16 Now he says -- the next part that they emphasize
17 or that they say stays in "The bank agreed if I purchased
18 the stock at a price, they had no way of knowing my actual
19 prices, that they would rebuy or buy the stock from me at
20 10." That is exactly what the proof shows.

21 He sold the stock to the bank at 10.

22 THE COURT: Count 14.

23 MR. SORKIN: I really wish I could respond to 13,
24 your Honor.

25 THE COURT: You can in just a moment.

1 gab-5

2 You would rather do it now?

3 MR. SORKIN: Whatever your Honor wishes. I think
4 it would confuse it --

5 THE COURT: No, that is all right.

6 MR. SORKIN: Your Honor, I don't know what Mr.
7 Could is talking about when he says the proof shows it. It is
8 just not so.

9 Starting at Page 144, your Honor, Mr. D'Onofrio's
10 testimony, there is the discussion that they are going to
11 funnel the stock into their secret Swiss accounts for the
12 benefit of ourselves. That is not a sale to the bank.

13 On Page 200 of Mr. D'Onofrio's testimony he says,
14 in the presence of Mr. Stoller, "Yes, I instructed Mr.
15 Herbert to put my 4900 shares into my coded account, Gypsy;
16 Mr. Stoller instructed Mr. Herbert to put his 5000 shares into
17 his account, Shirley, and he instructed him to put the 5000
18 shares of Allen's into Allen's secret numbered account."

19 On Page 218 there is the conversation -- this
20 is Mr. D'Onofrio's testimony -- there is the conversation
21 where they got receipts. Let me go back. I am sorry. Page
22 161, 162.

23 The conversation with Mr. Ballmer in Mr. Stoller's
24 presence where Mr. D'Onofrio says -- I am starting on Page
25 160.

1 gab-6

2 The meeting was held at Bank Hofmann. I told
3 at Phil's suggestion -- I was more of the detail man. Phil
4 said will you explain everything to Freddie and Ernest
5 Ballmer, and then D'Onofrio says they told Ballmer that they
6 had a meeting with Frank and that the indication letter Mr.
7 Pfingst and I had sent previously at our suggestion to the
8 bank was improper and it was illegal and it was against the
9 rules of the SEC," and now Page 162.

10 They said "I told Frank -- I also told him that
11 Marty Frank had instructed us at this previous meeting
12 in mid-November that when we went to the bank in order to
13 throw the SEC off base, Marty Frank wanted us to get from the
14 bank a bill of sale, (a), with our name on it, our address
15 in the United States, not to naturally mention our secret
16 coded names, a bill of sale."

End 1B

Tk 2A

qb-1

THE COURT: All this is fine and good, but let's get back to this. You are not somehow contending that that proves that he was acting as an agent for the bank.

MR. SORKIN: No. What I am contending, your Honor, is that nowhere is Mr. Stoller accurate when he says the bank had asked me to secure stock for them. That is part of Count Number 13.

I am also contending where he says down there in the bottom in response to the agent he was not a principal. He was not selling it for his own benefit. He was selling it into his coded account.

There was no understanding to sell it at \$10 a share. I think the proof is clear on that.

THE COURT: Wait a minute. Again you lost me. He is a principal, isn't he, to the extent he sells, even to go into his coded account. I don't understand you.

MR. SORKIN: But his answer, your Honor, the bank agreed that if I purchased the stock that they would rebuy it or buy the stock from me at 10.

That is not true. That is not true.

THE COURT: I know, but here is the problem. We go from pillar to post like a group of drunken sailors. I don't mean to criticize the question because he didn't obviously have the right information and it is always easy to

1 qb-2

2 criticize somebody's question in hindsight. But this is the
3 most confused mess. I had been reasoning pretty much
4 as Mr. Gould apparently is, that you had thought somehow that
5 you had proved that it was false to tell the SEC that he,
6 Stoller, was acting as principal rather than agent.

7 MR. SORKIN: I still maintain that, your Honor.
8 There was no principal transaction here. There never was.
9 He was not a principal. He had the nominee stock. He brought
10 it over to Switzerland. He told Herbert to put it into
11 his account and issue a receipt showing that it was sold to
12 the bank when in fact it was just his own money paying for
13 it.

14 MR. GOULD: Then he was a principal.

15 MR. SORKIN: He wasn't a principal selling the
16 stock to himself, your Honor.

17 THE COURT: We are really splitting hairs.

18 Let's turn to Count 14.

19 MR. GOULD: I suppose the guts of 14 is the allega-
20 tion that he doesn't own one share of Training With the
21 Pros.

22 THE COURT: "I have no financial interest in the
23 shares."

24 MR. GOULD: That is right.

25 MR. SORKIN: The guts of that is the next sentence,

1 qb-3

2 "Whether people I know have stock or not, I don't know and
3 I couldn't say." "I don't know or couldn't say."

4 As of June 20 he knew Weissinger had 9100 shares
5 and Bonavia had 9100 shares. He was over there when
6 the stock was crossed on Weissinger's and Bonavia's account
7 on March 12. That was true for the rest of the case where
8 Bonavia was running back to him and asking him, "What am I
9 going to do to get the stock out of my account?"

10 Finally Bonavia asks him on Page 1552 of the
11 transcript at the Waldorf meeting --

12 MR. GOULD: Where is that?

13 MR. SORKIN: The next sentence on Page 1552.
14 He says, "I mentioned that I bought the stock from Philip
15 Stoller" --

16 MR. GOULD: Wait a minute, Mr. Sorkin. I want to
17 keep up with you.

18 We can't skip around.

19 Are you excluding the first thing, "I do not now
20 own one share of Training With the Pros"? Is that out of
21 the claim? I think that is what his Honor wants to know,
22 what is in and what is out.

23 MR. SORKIN: No, I am sorry. I do not maintain
24 that. I say that is false, I did not own one share from
25 the moment. In selling it to himself he did own the stock.

1 qb-4

2 MR. GOULD: There is no proof that he sold it to
3 himself. Tell me from the record where is the proof that
4 he sold it to himself? There is proof that D'Onofrio said
5 they talked about doing that.

6 MR. SORKIN: If you look at Page -- I am looking
7 for the conversation. Here it is on Page 200. Was anything
8 else said at this conversation --

9 MR. GOULD: You are skipping 198? Look at
10 the question and answer. The last question and answer on
11 198. I suggest that that is consistent with what I am saying.

12 MR. SORKIN: Phil then told Mr. Herbert to make
13 him up and check the 50,000 less cost he then handed to Mr.
14 Allen. I turned to Page 200, "Was anything else said at the
15 conversation? Yes, Mr. Stoller instructed Mr. Herbert to
16 put his 5000 shares into his account Shirley."

17 MR. GOULD: I don't know what that means. I read
18 one place where he sold the 5000 shares to the bank, got a
19 check for it and then D'Onofrio says something about putting
20 his 5000 shares into his account, Shirley, 5000 shares he
21 doesn't own any more because the bank paid him.

22 MR. SORKIN: The context, if you look and if you
23 recall what he is telling Mr. Ballmer that they were
24 instructed by Mr. Frank to get receipts to throw the SEC off
25 base to make it look like they were selling it to the

1 qb-5

2 bank.

3 MR. GOULD: Where is the proof that he owned the 5000
4 shares aside from Stoller instructed Mr. Herbert to put
5 his 5000 shares into his account and so on, that doesn't
6 mean he owned any shares.

7 MR. SORKIN: That is our position. This was a
8 contrived transaction. Mr. Stoller knew it was. He wasn't
9 selling it to the bank.

10 According to Mr. Frank's instructions, as per the
11 testimony of D'Onofrio, they were told to get receipts to
12 throw the SEC off base. And that the stock was really going
13 into their own accounts and those receipts are sham receipts,
14 your Honor.

15 There was never any sale.

16 MR. GOULD: That is a conclusion, I suppose, and
17 for the purpose of this argument it is nice to make it but
18 Government Exhibit 31 is a confirmation. Stoller confirms to
19 the bank Hofmann that he has sold to them 5000 shares of
20 Training With the Pros. That is what the Government proved
21 in this case.

22 MR. SORKIN: If Mr. Gould will look when 31 was
23 introduced in evidence, when he was not in court but up in
24 the Court of Appeals, he would see that came in with Govern-
25 ment Exhibits 5 through 9, and 14, and 21 through 31, all

1 qb-6

2 part of what Mr. Stoller gave to Mr. Herbert and Mr. D'Onofrio
3 at this meeting to show that if they were ever called down
4 by the SEC it would throw the SEC off base.

5 MR. GOULD: That doesn't provide proof that he
6 owned the stock.

7 THE COURT: Let's go to Count 16.

8 MR. GOULD: He is first asked if he knows if Allen
9 owns, as of the date of the interrogation, any stock.
10 There is no proof that Allen owns any stock. Does D'Onofrio
11 own or owned at any time and he says then, and this is his
12 answer which I was talking about before, "I have no knowledge."

13 Then he explains what he means by knowledge. That
14 is not a negation. He says I don't know whether he owns
15 it or not. I don't know anything about it.

16 MR. SORKIN: He claims he doesn't know anything
17 about it, meaning if D'Onofrio owned stock at any time. I
18 think the record --

19 MR. GOULD: Where is that?

20 MR. SORKIN: I think the record is complete in every
21 phase that he knew D'Onofrio owned stock. He was there
22 in Switzerland when the stock came over. He was there
23 at the Baur au Lac meeting when they discussed it. He was
24 there in Frank's office when they discussed nominees. He
25 was there when he was sitting at the Swissair lounge and

1 qb-7

2 D'Onofrio put his certificates on the table and Allen's
3 receipts on the table and Stoller put his certificates on
4 the table and brought them over there.

5 THE COURT: All right.

6 MR. GOULD: That is not what he is asked, your
7 Honor. You see, the trouble with this answer is the man
8 is saying to him in his own kind of circumlocutions which I
9 don't applaud either, he is saying, I know what D'Onofrio
10 said, but I don't really know whether it was his stock or
11 he owned it. I don't know anything about it. I know what
12 he said. That doesn't mean I know he owns it. If you wanted
13 to sharpen it up you could do it. You could get him to say
14 it.

15 They didn't do it here.

16 The only stock he can be charged knowing about was
17 stock in the names of these nominees. What did you want him
18 to say, yes, I know that one time D'Onofrio had some nominees.
19 I don't know what his arrangements were with them. If he
20 didn't volunteer that he is guilty of perjury. That is what
21 they are saying.

22 MR. SORKIN: That is not what the evidence shows.
23 The evidence shows they were all planning to get the stock.
24 They were advised by Mr. Frank to use people who they could
25 trust. They bought the stock back, bought it back before

1 qb-8

2 the meeting and then they owned the stock. He wants it
3 both ways. He wants to say he didn't own stock or D'Onofrio
4 owned stock, but they want to say they bought it back from
5 their nominees at 8-1/4 per share. That is absurd. When
6 they were in the airport transporting the certificates over
7 each of them knew they owned the stock they had in their
8 possession.

9 MR. GOULD: Each of these people, as far as
10 Stoller was concerned, they each put up their money.

11 THE COURT: This Court rules as follows:

12 I direct the acquittal of Philip Stoller in respect
13 of Counts 11, 12, 13 and 15. I deny his motions for
14 directed acquittals under Counts 14 and 16. I might say that
15 in so doing I don't mean to be misunderstood that these are
16 powerfully proved counts or disproved counts. I am simply
17 saying there is enough to go to the jury without total
18 futility and confusion or without an utter failure of proof,
19 which I regard the other counts as presented.

20 To summarize, the only false statements count that
21 are remaining at this point are Counts 14 and 15. On all
22 the others I have directed an acquittal of Stoller.

23 Let's turn to the conspiracy count and the mail
24 fraud counts.

25 MR. GOULD: I think they kind of run together,

1 qb-9

2 your Honor.

3 First of all, with some apology I say to the
4 Court that I have been living with manipulation indictments
5 now almost from 1934 on.

6 THE COURT: You wouldn't have missed the experience
7 over the years for the world.

8 MR. GOULD: I would not have. I remember some of
9 the early cases that we were in. You know, your Honor, in
10 the beginning it used to be a principle that there couldn't be
11 a manipulation without wash sales. I can even point to a
12 case where the indictment was dismissed, I think erroneously,
13 because the Government failed to show the wash sales which
14 in the early days were regarded as an absolutely indispensable
15 ingredient of a manipulation charge. We know. We are
16 more sophisticated today. I will concede to the Court that
17 it is quite possible to manipulate a stock criminally, that
18 is violate the manipulation section, without wash sales.

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20 End 2A
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But we know what manipulation means. Manipulation

Under the impact of those statements the stock goes

Then when you analyze it it just doesn't add up to

Well, the testimony is that here was a security

1 They came into the hands of the public. The co-conspirators
2 the manipulators, get their hands on 14,900 shares and
3 then the stock runs away. The stock goes from its offering
4 price of about \$7 in February to 60 something by June.
5 And we look for that conduct of the alleged manipulators
6 which had the required causative impact on the market value
7 of the stock. I know probably better than any of these
8 fellows know that when you segregate about 30 per cent
9 of the stock of a small issue, as it is alleged they did
10 here, that has an impact. That narrows the market. There
11 is less stock around, the market is thin, the spreads are
12 wide and it has an impact.
13

14 Then I say how about 10,000 shares, because
15 that we have seen many times, 25 per cent. I would have
16 to say yes, that has an impact.

17 Then I say 5,000 shares, yes, that has an impact.
18 And we are up against this truism which those of us who
19 have dealt with the securities laws all our lives have
20 been dealing with and have been befuddled for 30, 40 years
21 now.

22 Every time you sew up stock you are engaged
23 in something that has an impact. It becomes manipulative
24 only when that is the purpose of it. But the Government
25 doesn't say, as perhaps they should have, it was the

2 14,900 shares which had the manipulative impact. That
3 is not the gravamen of this case. You read the indictment.
4 There were false statements. There was tomtom bearing
5 and we are all accustomed to this, the beating of the
6 tomtoms, the calling up of brokers, the issuance of the false
7 reports.

8 In this case, aside from, let's call it, the
9 immunization from the market of the 14,900 shares, the
10 rest of it is almost level. Where in the classic case
11 of manipulation, as everybody understands it, the manipu-
12 lators would be calling 50 or 60 brokers, inciting people
13 to make markets if it were an over the counter stock,
14 issuing bulletins, pretending that there were great
15 commercial developments in the company, what the heck
16 have we got in this case? They bring in a fellow named
17 Schneiderman and Schneiderman says, "I talked to Stoller
18 and he told me about this stock and I went into the
19 sheets and he is the only broker that we know about who
20 came into the sheets as a result of the manipulation.

21 There is no showing that Mr. Schneiderman ever
22 handled 1,000 shares of stock. So that if we look
23 to Schneiderman for the ideological causation, the impact
24 of the manipulators on the market, you better look to
25 somebody else because Schneiderman didn't do it.

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2 Well, they say, all right, this is a sport, this
3 case. We don't have what we usually do. The market makers
4 coming in under the stimulus of the manipulators and making
5 a market, it must have been something else. Oh, we know
6 what it was, it was the false statements which reached
7 the public.

8 Well, sir, I have seen these cases many times.
9 I have sat while dozens and dozens of brokers took the
10 stand and testified. I got into the stock because the
11 defendants told me about it, they kept feeding me
12 information.

13 I peddled it out to my customers. I gave my
14 customers the same misinformation. There is your standard
15 case. That is what we call in the jargon of the securities
16 trade beating the tomtoms.

17 In this case when we exclude Mr. Schneiderman
18 who probably didn't handle 500 shares during the whole
19 course of his involvement in the manipulation, I don't
20 remember what it added up to --actually nothing. There
21 is no proof that he handled a single share. He just put
22 his names in the sheet. We are going to be told that
23 Mr. Schneiderman's presence in the sheet due to the
24 conversation with Stoller was what sent the stock from
25 7 to 60? Baloney.

1
2 Now we go to the alternative. It had to be
3 something else. Very simple, the false statements to the
4 brokers. Let's see about the brokers. We had Mr. Paruch
5 who says I called this fellow and I asked him about stock
6 because he was a reliable guy and he said he liked it and
7 I bought it without looking into it and his partner,
8 Mrs. Wien, and when we finished we are talking about a
9 few hundred shares.

10 Is it to be suggested that the purchase of
11 a few hundred shares by Mr. Paruch and Miss Wien had the
12 causative relationship, the impact on the market price
13 of the stock that sent it from 7 to 60?

14 By the way, the conversation with Mr. Paruch
15 and through him with Miss Wien is when the stock is almost
16 at the high. Whatever has happened to this stock between
17 \$7, the issuance price, and 60, what they paid for it,
18 we don't know what these manipulators did. That is out of
19 the conspiracy.

20 There are no brokers. There are no customers.
21 There is nobody to explain that increase from that point
22 of view. Oh, it gets explained before we are finished.
23 Oh, there is another broker, Nat Hyman. A very sophisticated
24 little fellow with a very good house. The same story,
25 I knew Stoller, very smart guy, made money with him,

1 and I bought the stock for a couple of customers, 2, 300
2 shares.
3

4 By the way, I bought it at the high. If there
5 was a manipulation the manipulation was over by the time
6 poor little Hyman gets into it. But Hyman on cross
7 examination, out of the accumulation of 40 years experience
8 in the market, he tells you why the stock ran up. Not
9 because of any manipulation, but because the brokers ran
10 away with it.

11 Mr. Rashes, the SEC fellow, decent, honest,
12 truthful man says in response to my questions, "Those
13 were the times. This was happening all over with these new
14 issues."

15 Let us assume that there was a manipulation
16 in this case, that something was done by these people
17 other than the immunication of the 14,900 shares. There
18 is not a shred of proof that anything that they did,
19 any activities, any publicity, any communications
20 with brokers, any communications with stockholders, any
21 communications with anybody, had any impact on the market
22 price of this stock unless we want to assume that
23 the difference between what Paruch and Wien's customers paid
24 and what Hyman's customers paid, the difference between
25 60 something and 70, that was the manipulation. That is

1 where it happened, in there. Because as far as this
2 Court knows no broker other than those two were spoken
3 to.
4

5 Schneiderman's activities are not proved
6 in any way. As far as we know he doesn't handle a
7 share of stock. I would like to see the manipulation.

8 I suggest to the Court that there is no proof
9 of a conspiracy to manipulate. Was there proof of
10 violations of securities laws, yes, your Honor. I could
11 make out a very good case of some other statutes that we
12 are not charged with here. But as far as this conspiracy
13 is concerned, this conspiracy to manipulate, this 10B-5
14 conspiracy, this hybrid thing they have there? Where
15 is the proof? Who got the false statements? Who ran the
16 stock up? How did it get run up?

17 It is not here. I think this count has to be
18 dismissed for failure of proof.

19 THE COURT: I assume if you are right Counts
20 2 through 10 should go.

21 MR. GOULD: I think they should go. I think they
22 ride on the conspiracy count. I think they did. I think
23 this is a very illconceived prosecution.

24 THE COURT: Mr. Feldshuh.

25 MR. FELDSHUH: Your Honor, I endorse Mr.

Gould's remarks but I address myself to Mr. Frank.

With regard to the alleged agreement insofar as Mr. Frank may have become part and parcel of it, as Mr. Sorkin himself indicated, Mr. Frank came in the picture later down the road, namely sometime in October or November 1968.

At that time with regard to his participation in the alleged conspiracy he was the architect of the alleged nominee situation and the architect perhaps of the bill of sale situation into Bank Hofmann. But that was the end of it. There was nothing after that that tied Mr. Frank into the conspiracy. He departed from the conspiracy. He had nothing to do with touting the stock. He had nothing to do with calling brokers. He had nothing to do as part and parcel of an object of this conspiracy to raise the market price.

THE COURT: The Government would agree with a good part of what you are saying but the Government's view about your client's role is quite different. You know that.

MR. FELDSHUH: I am missing you slightly, sir.

THE COURT: I was saying that the Government would agree with a great deal of what you said. They don't accuse Mr. Frank of calling brokers and anything of

1 that nature. That isn't what they accuse him of. You
2 know that.
3

4 MR. FELDSHUB: As to the manipulative aspects in
5 trying to raise the price of the stock Mr. Frank had long
6 since departed from any conspiracy or act in connection
7 with that conspiracy.

8 I address your Honor to, apart from the conspiracy
9 count, I was going to address your Honor to the substantive
10 counts concerning the alleged manipulative area under
11 Section 10 and under 10B-5. As to those counts
12 Mr. Frank had nothing to do with it. There is no evidence
13 that he had anything to do with it. His departure
14 from the conspiracy or from the alleged activities of
15 the conspiracy parted at the point where Bank Hofmann
16 allegedly got a bill of sale of some kind with his
17 claimed stamp and signature on it.

18 At that moment he stopped. There was nothing
19 more he did in connection with furthering this conspiracy.
20 So with regard to those substantive counts and insofar
21 as those substantive counts are also made reference
22 to in Count 1 on the conspiracy I respectfully submit
23 there is a total failure of proof.

24 With regard to Count 1 itself, your Honor, when
25 you look through the means and objects of the conspiracy

1
2 you find a great many areas in which the proof is lacking
3 as to Mr. Frank. For example, the Government relies
4 with considerable emphasis on paragraph 5 of the means
5 of the conspiracy appearing upon page 4. With regard
6 to that, your Honor, subparagraph B as to the means of
7 the conspiracy makes reference to the coded account of
8 Lance.

9 Your Honor, I said or I say that apart from
10 some indirect reference by D'Onofrio as to something
11 common about Lance or something of that sort about which
12 he claims he didn't know anything about Lance or Lancer
13 until a year after this conspiracy ended, until the
14 objects were fully attained, I say there is no evidence
15 in this case that there was a coded account by the name
16 of Lance at the time of the existence of this conspiracy.
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2 THE COURT: Let me say as to that, Mr. Feldshuh,
3 that is an arguable proposition, but that still doesn't
4 let your client out. You and I would agree there is nothing
5 wrong with him having a coded account. The real proof
6 from the Government's viewpoint, the real proof against
7 Mr. Frank is all this business about how he is the architect
8 of remaking the deal so as to make it go better and to
9 conceal it afterwards.

10 MR. FELDSHUH: May I suggest to you, your Honor,
11 that with regard to that phrase, that is strictly, if it
12 is anything, a Section 1733 Act violation, claiming an
13 artifice and a fraud. It has nothing to do with manipula-
14 tion.

15 By the way, your Honor, if your Honor will follow
16 my argument on manipulation, Mr. Frank is not guilty
17 of any mail fraud. There was no part of the conspiracy,
18 agreement, as to which he may have been a party according
19 to the testimony that had anything to do with mail fraud
20 or sending out confirmations.

21 That was no part of Mr. Frank's participation
22 in this conspiracy.

23 THE COURT: This is one of the strangest
24 problems. I really don't understand that point either.

25 I don't really understand the Government's theory

1
2 against Frank under mail fraud.

3 MR. FELDSHUH: Right.

4 THE COURT: Also, I don't understand, I never
5 understood why the indictment was written the way it is.
6 Count 2 has a subdivision A and B of two mailings.

7 MR. SORKIN: Yes, your Honor.

8 THE COURT: I just don't understand. What went
9 on here? Was this written out -- did somebody have an
10 aberration downstairs? I don't get it. What is the differ-
11 ence between this and Counts 3 through 10?

12 MR. SORKIN: It is our position your Honor that
13 the thrust of 77-QA, 17-A, is the use of the mails. It is
14 our position, we have to allege jurisdiction in the count
15 in order to sustain the count legally as a matter of law.
16 We have alleged the jurisdiction and we have proved it.

17 Some of the indictment is that are filed in this
18 court do not allege jurisdiction under 17-A.

19 My prior experience in a case before Judge Mezner,
20 quite frankly, we had to prove our jurisdiction and he
21 wanted us to prove it and it was alleged in the indictment
22 and we proved one mailing to sustain the count as a matter
23 of law. That is the only reason it is in there, your
24 Honor, quite frankly.

25 THE COURT: You baffle me. Why go into all

of this when you got Counts 3 through 10? I don't quite get it.

MR. SORKIN: If Mr. Feldshuh is through, I would be happy to tell the Court.

THE COURT: I'm not sure he is through either. I have always been puzzled. Go ahead, Mr. Feldshuh. I'm going to ask Mr. Sorkin about this because I really wonder whether you haven't got maybe a plausible argument that Frank, whatever else he may have done, really wasn't in on the mail fraud.

MR. FELDSHUH: Right. I also direct your attention, your Honor, to the courts, as you pointed out, 3 through 6 which had to do with the manipulation. Here too, I say that Mr. Frank had nothing to do with that. That is 10B-5, Section 10.

Your Honor, with regard to Count 2, which is the Section 17 violation.

As to that, your Honor, I will say that D'Onofrio did testify with regard to alleged talks with Mr. Frank. I will also say that it is D'Onofrio who claims that there was a statement by Mr. Frank about nominees and all that sort of stuff. I'm not entirely sure, however, that you can divorce Count 2 from the other counts, namely the manipulative concepts. It is all one ball of wax,

2 Counts 2 and 3 through 6.

3 THE COURT: This is one of my problems. I'm
4 having trouble with this, too. It seems the most curious
5 way to set up an indictment.

6 MR. FELDSHUH: I say, sir, that you just can't
7 find the necessary proof. That is apart from the fact, your
8 Honor, that with regard to Count 1 insofar as Mr. Frank
9 is concerned, and in the proof of the means of the
10 conspiracy, we have voids of proof with respect to that,
11 your Honor, and starting on page 5 of the indictment. I
12 refer your Honor to subparagraph E on page 5 of the
13 indictment where there is a lot of talk about the fact
14 of parking stock in "their coded accounts."

15 There was no evidence of any stock, parked in
16 Mr. Frank's alleged coded account. There is just
17 nothing there at all.

18 There is a total failure of proof there.
19 So that with respect to Mr. Frank, this proof under
20 subparagraph E as a means totally fails.

21 I point out, your Honor, that there are only a
22 few places throughout this indictment where Mr. Frank
23 is charged with participating in a means of conspiracy.
24 Thus, the next place where he is charged is on page 8,
25 under subparagraph O. At that point there is a statement

that Mr. Frank notarized without data.

I need not point out, your Honor, that with regard to the concept of notarization, as a matter of law under the laws of the State of New York it would be held that this was not a notarization of anything because it requires something more than merely a name and a stamp. It requires some statement by the notary as to the acknowledgement of either the genuineness of the signature or that the party came before him and acknowledged that this was an instrument that that person was executing.

Those words are totally absent. So as a matter of law, under the laws of this state, that is not a notarization.

I would request your Honor to so rule.

With regard to the purpose of said notarization in subparagraph P on page 8, it is plain that the purpose of the notarization as far as Mr. Frank was concerned was not to cause Emanuel Deetjen & Company to believe the nominee sold their stock. It had nothing to do with Mr. Frank because Mr. Frank's claimed notarization did not attest to any of the substantive areas of the alleged piece of paper. That is not the function of notarization.

The law of New York again is clear, where a

1 notary puts his stamp in a properly acknowledged instrument,
2 all that the notary does -- he doesn't swear to the truth
3 or efficacy or anything else of the paper itself. All
4 he says, the person came before him and acknowledged
5 that he executed and no more.

6 So that with regard to the purpose, there is no
7 proof that Emanuel Deetjen was called to believe that the
8 stock was sold, certainly not by Mr. Frank, because it
9 was Bank Hofmann who asked perhaps under this testimony
10 as brought out that there be a notarization of some kind.

11 What Bank Hofmann was going to do with it,
12 that was up to Bank Hofmann.

13 In that connection may I respectfully point out,
14 sir, that you will notice that in the exhibits offered by
15 the Government, none of the Stoller so-called bills of
16 sale, none of the D'Onofrio so-called bills of sale
17 had any notarization on it. So it wasn't as if Bank
18 Hofmann needed this notarization to attest as to anything.
19 If it was Emanuel Deetjen who was relying upon notarization,
20 they didn't have it in Stoller papers, they didn't
21 have it in the D'Onofrio papers.

22 In point of view of P, there is a failure of
23 proof.

24 I might point out, and this I believe to be most
25

credible, on page 9, subparagraph R, we go through this \$15,000 business, page 9, subparagraph R.

THE COURT: Yes, I'm just looking at it.

MR. FELDSHUB: Your Honor will recall there is no proof that any \$15,000 was paid to Mr. Frank. The furthest you get on any \$15,000 was the assertion by D'Onofrio that he might have adjusted something with somebody else as to his alleged share, but there was no proof whatsoever that Mr. Frank got \$15,000.

In addition to that, your Honor, under subparagraph S it says that the Defendant Martin Frank was also promised additional monies by Defendants Allen and Stoller.

There is absolutely no proof of any such thing of a promise of additional money.

Furthermore, your Honor, with regard to the overall situation, at no point in time was there any evidence to the effect that Mr. Frank ever got the 1,000 shares of stock or things of that nature.

Your Honor, with regard to Counts 7 to 10, which is the mail fraud count, I wish to add nothing more than what I have said heretofore. I believe I have covered our aspects of this situation insofar as the indictment is concerned.

Thank you, sir.

THE COURT: Mr. Sorkin, how do you want to respond? Do you want to respond to the manipulation argument first?

MR. SORKIN: I would rather work backwards from what Mr. Feldshuh just said.

THE COURT: All right. Let me ask you: What does Count 2 really have to do with Martin Frank, seriously?

MR. SORKIN: Count 2 it seems, your Honor -- if there was a stronger count in this indictment on Martin Frank, I don't know of it. This is a fraud in the offer to sell and sale of the stock Training With The Pros.

THE COURT: In the sense that he told them how to make the deal go down better.

MR. SORKIN: Not only that, your Honor. If I can just go back a little bit in the testimony, these three guys, these three conspirators, D'Onofrio, Allen and Stoller sit down and plan a way to gather a block of the stock. It is planned at Baur au Lac. There is conversations of can D'Onofrio get Moss to do this, let's make it 100,000, Stoller says it has got to be over five. How about between 40 and 50? Fine. They are setting up a means to get a block of the stock and they also set up a means where Mr. Stoller says: Jerry, I got a good idea. Let's blow it off to Muir and Joe, Weissinger

and Bonavia.

They then start this little plan, this conspiracy, to obtain a block of the stock.

D'Onofrio has been working on the offering circular. He's been working on the notification. He says that he can control Moss and he can get Moss -- he got Moss to change the name of the company as per Allen's instructions.

They then send this indication letter which comes in October 17th. They didn't file the notification until the 25th of October. That's no good. They then go to Frank and Frank instructs them. Fellows, this is the way to garner a block of the stock without getting caught. I'm using the words "without getting caught." He instructs them to use nominees, which is never disclosed in the offering circular, never disclosed to the SEC that these three conspirators, Stoller, Allen and D'Onofrio, at his instructions and at his direction are gathering 33 per cent, in fact, more than 33 per cent of the entire issue.

It is our position with respect to Count No. 2, and I think it is clear under the law, that D'Onofrio, Stoller, Allen were underwriters. It was never disclosed in the offering circular.

At Mr. Frank's instructions they were told how to avoid being disclosed in the offering circular.

2 Use these nominees.

3 That it seems to me, your Honor, is the crux
4 of Count No. 2, the fraud. In the offer to sell and the
5 sale of the stock, none of that is ever disclosed, how
6 these three conspirators obtained a block, 33 per cent
7 of the entire offering, and put it in their Swiss bank
8 accounts over in Switzerland.

9 Mr. Gould talks in terms of manipulation. That's
10 all very well and good. But in this particular case, your
11 Honor, as he has so correctly put it, by taking 33 per
12 cent of the float off the market, you are going to have thin
13 spreads and the stock as Mr. Hyman said is going to go
14 with wide spread, topsy turvy, roller coaster, all over
15 the place.

16 That is our point with respect to Count No. 2.

17 THE COURT: All right.

18 MR. SORKIN: I also think, and I must point this
19 out, your Honor, that if these three were underwriters,
20 this was a fraud -- I'm sorry. Let me rephrase that.

21 If Stoller, Allen and D'Onofrio, your Honor,
22 as we have indicated were underwriters, and it should have
23 been disclosed, then the offering is fraudulent and
24 the Reg. A. exemption must fail.

25 By failing to disclose this information,

how they were planning to get the stock from the United States over to Switzerland and put it in their secret accounts, that should have been disclosed. It was never disclosed, your Honor.

Now, let me direct my attention, your Honor, and I want to go back to Mr. Feldshuh. Mr. Feldshuh says this business about the notarization. What he doesn't tell the Court is that Mr. D'Onofrio testified -- because Allen couldn't go overseas, Herbert and Ballmer wanted something on Allen's receipts to show that Allen had, in fact, bought the stock from these people.

THE COURT: I understand. You don't have to go into that. Let me ask you something.

MR. SORKIN: Yes, sir.

THE COURT: I follow you on Count 2.

We then go to 3 through 6 and 7 through 10.

MR. SORKIN: Let's take 3 through 6.

THE COURT: Martin Frank is advising these fellows, but he is not advising them in terms of traditional manipulation and distribution.

MR. SORKIN: What you say, your Honor, is correct, except I think there is one point that must be said and is left out, and that is Frank is advising them, but Frank has knowledge that these guys are going to

2 blow the stock off to Weissinger and Bonavia.

3 Now, in order to blow the stock off -- I'm using
4 the term blow off as it was used in this case -- in order
5 to sell the stock to Weissinger and Bonavia in Switzerland,
6 he also knows that they are going to do this deal like
7 they di the other deal. He is told that.

8 He also knows that Bonavia and Weissinger
9 have to be rescued.

10 How do you rescue them? You rescue them by going
11 back to the Elinors when the stock gets to a nice fat
12 price.

13 As Mr. Gould says, no phony statements were sent
14 out, no touts were made, no false documents. You didn't
15 need false documents with the kind of people that Stoller
16 and Allen were dealing with, Hyman, Wien and Paruch.
17 Their testimony is consistent. They relied on Stoller
18 and Allen consistently because they made --

19 THE COURT: What you are saying is that the jury
20 could determine that Martin Frank clearly should have
21 contemplated all of this going to the Elinors and through
22 them to their poor customers.

23 MR. SORKIN: I'm not only saying that, your
24 Honor, but from the November '68 meeting -- I'm also
25 saying it later on in March of 1969 when they can't

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get the stock transferred into street name. When they go back to Mr. Frank and they say: Listen, the deal is going to fall through. We can't get it transferred into street names, we have to get receipts, we can't get it into Deetjen's name. Once it went into Deetjen's name, in a street name stock, your Honor, Mr. Frank should have known that that stock was going to be broken off right into the market. I think the jury can certainly infer that with respect to Count 7 through 10.

MR. FELDSHUH: May I point out the testimony is perfectly clear --

MR. SORKIN: Mr. Feldshuh, let me just make a few more points here.

MR. FELDSHUH: Excuse me.

3B

1 gab-1

2 MR. SORKIN: Mr. Feldshuh pointed out, your Honor,
3 means paragraph number E, parking or depositing.

4 Parking is a lawyer's term. It is a securitie's term
5 But the term there also is depositing and D'Onofrio's
6 testimony is clear. They were sitting in Switzerland and they
7 told Herbert to deposit their stock into the Swiss bank
8 accounts, their own bank accounts.

9 Prior to that in the conversation with Frank
10 D'Onofrio testified that Frank asked him, "How are you going
11 to do it?"

12 "Well, we are going to run it off and put it,
13 funnel it into our own accounts and put it in our own accounts
14 and this is the way to do it."

15 He knew that is what they were going to do.

16 With respect to him getting moneys, he asked
17 them at that meeting, "What am I going to get out of it?"

18 Someone said, "\$15,000."

19 Then he said, "I want 1000 shares."

20 Move ahead three years and they are sitting in
21 Bankf Hofmann in Switzerland in front of Herbert and Mr.
22 Frank is complaining that he wants his thousand shares
23 and he is due 40,000 or \$50,000.

24 I can't argue with Mr. Feldshuh with respect to
25 means paragraph Number R. There is no proof that Mr. Frank

1 gab-2

2 received approximately \$15,000, but there is proof from Mr.
3 D'Onofrio that he paid Allen \$5000 which was to go towards
4 paying Mr. Frank 15.

5 The exact words of that means paragraph -- true,
6 your Honor, we haven't prove that. I think there is testi-
7 mony in this case and I only raise that for that point.

8 THE COURT: Are you going to tell the jury that?

9 MR. SORKIN: I would assume, your Honor, that you
10 would strike means paragraph R.

11 THE COURT: That is right.

12 MR. SORKIN: There will be no point. I intend
13 to tell the jury what Mr. D'Onofrio said. I think in fair-
14 ness, I don't think R can stand. Quite frankly, your Honor,
15 I have gone over the indictment -- I will wait for defense
16 counsel to say what they have to say with respect to the
17 allegation in the indictment.

18 Going back to Mr. Gould's point --

19 THE COURT: Wait a minute. What does that mean?

20 MR. SORKIN: I can say it now. We have gone over
21 the indictment, your Honor. I think in fairness we can't
22 allow means paragraph number J to stand. I don't think
23 we did prove that nearly all of the remainder of the said 42,000

24 --

25 THE COURT: Let's not be playing games with

1 gab-3

2 one another again. This is what came up last night in the
3 colloquy with Mr. Edwards.

4 MR. SORKIN: I was going to wait.

5 THE COURT: Don't wait. It is only a waste of
6 time when you wait and also a prosecutor, as Mr. Feldshuh will
7 remind me, is supposed to be fair, right?

8 MR. FELDSHUH: Right, sir.

9 MR. SORKIN: I think J has to go, your Honor, and
10 I think with respect to the overt acts --

11 MR. GOULD: When counsel says he thinks J has to
12 go, does that mean he consents?

13 THE COURT: Yes, that is to be interpreted he
14 consents. I am going to get more facile and Sorkian, which
15 is a new language.

16 MR. SORKIN: I apologize, your Honor.

17 THE COURT: I am just teasing. Don't take me ser-
18 iously. You consent to J and R so far. Anything else?

19 MR. SORKIN: No, we maintain that all the other
20 means paragraphs --

21 THE COURT: However, let's go to overt acts.

22 MR. SORKIN: With respect to overt acts, your
23 Honor, I think one has to go --

24 MR. GOULD: Wait.

25 MR. SORKIN: One should be stricken.

1 gab-4

2 MR. GOULD: I am still on the means paragraphs.

3 THE COURT: J and R he consented to.

4 MR. GOULD: Thank you, your Honor.

5 THE COURT: Now he is consenting to overt
6 act Number 1 on Page 9.

7 Continue, Mr. Sorkin.

8 MR. SORKIN: Yes, your Honor. Overt Act Number 4.

9 MR. GOULD: Slowly now.

10 THE COURT: 4 on Page 10.

11 MR. SORKIN: Overt Act Number 8.

12 THE COURT: All right.

13 MR. SORKIN: Overt Act Number 9 and Overt Act
14 Number 10.

15 THE COURT: All right.

16 How about Overt Acts 13 and 14, do you think you
17 proved those?

18 MR. SORKIN: Yes, your Honor. 13 is Nathan Hyman,
19 and after that conversation he goes out and he buys for Dinan,
20 I believe it is.

21 THE COURT: What is May 21, Paruch?

22 MR. SORKIN: No, Paruch is also Hyman. He spoke
23 to him again and asked him what happened to it.

24 THE COURT: All right. What is May 21 then?

25 MR. SORKIN: That is also Hyman, your Honor.

1 gab-5

2 THE COURT: I beg your pardon. All right.

3 MR. SORKIN: 12, if you want to go through it, is
4 Elinore Wein, your Honor.

5 I think we have gone over. I am working back-
6 wards.

7 THE COURT: In any event, let me rule on these
8 other motions and then maybe the defense would like to raise
9 some additional allegations.

10 I am going to deny the motions of the defendants
11 in respect to Counts 1, 2, 3 to and including 6, and 7 and
12 including 10.

13 I quite agree. This isn't a typical manipulation
14 in my experience, but I do believe that depending on the
15 view of the trier of the facts, there is a manipulation
16 sufficient in this business of dealing with this block of
17 stock which if D'Onofrio and others are to be believed was
18 to be isolated out and then jacked up through the transactions
19 to nominees, Bank Hofmann and finally to Weissinger and the
20 other party and then again dumped back on the market
21 through these friendly brokers who relied on Allen and Stoller
22 because of previous good works done by those two as touters
23 of profitable securities for them.

24 I will, of course, also, however, grant the
25 motion of the Government which they fairly make by reason of

1 gab-6
2 their consent to dismissal against his judgment and R,
3 the means paragraphs under those numbers or letters, and
4 to strike overt acts 1, 4, 8, 9 and 10.

5 Now, Messrs. Feldshuh and Gould, are there any
6 other overt acts or allegations particularly in Count 1 but
7 not necessarily to be confined to Count 1 that you would
8 like to move to dismiss or strike?

9 MR. FELDSHUH: Your Honor, with regard to means,
10 Page 9 --

11 THE COURT: Paragraph number?

12 MR. FELDSHUH: Sub-paragraph (s), there
13 is no evidence that he was promised additional money.

14 THE COURT: I think you could argue that very
15 cogently as a factual matter. On the other hand, I think
16 the Government is entitled to make their arguments to the jury
17 on this.

18 MR. FELDSHUH: There isn't a scintilla of proof
19 about additional moneys, your Honor, nowhere. There was
20 the 15 and the alleged 1000 shares of stock. There isn't
21 one basis of proof on that.

22 MR. SORKIN: Your Honor, may I answer Mr. Feld-
23 shuh? Your Honor, what are we talking about in a
24 thousand share of stock?

25 THE COURT: You see, that is what he means.

2 In other words, Paragraph (s) from the draftsman's
3 point of view refers to that 1000 shares. It is according
4 to the Government's theory now. You have several arguments,
5 I understand, but it seems to me they must go to the fact
6 dinder here.

7 So I deny your motion to strike means paragraph (s).

8 Anything else, gentlemen?

9 MR. FELDSHUH: Of course I have made comments with
10 respect to the other sub-paragraphs. I take it your Honor
11 has ruled against us on that, namely b, e, o, p --

12 THE COURT: I am not going to strike those. I
13 understand your factual arguments.

14 MR. FELDSHUH: Right, sir.

15 THE COURT: I am not going to strike them as a
16 matter of law at this juncture.

17 MR. FELDSHUH: May I just to the extent it may have
18 had any impact upon you, your Honor, reference by Mr. Sorkin
19 to the offering circular was incorrect. Mr. Frank had
20 nothing to do whatever with the offering circular.

21 THE COURT: I didn't hear Mr. Sorkin say other-
22 wise.

23 MR. FELDSHUH: If I am mistaken --

24 MR. SORKIN: I don't think I said it. If I did,
25 I apologize.

1 gab-8

2 THE COURT: I don't think so either.

3 MR. FELDSHUH: I just wanted your Honor to
4 understand.

5 THE COURT: I agree with you and so does Mr.
6 Sorkin. He didn't say that.

7 Anything else?

8 MR. GOULD: I have nothing.

9 MR. FELDSHUH: I do have something else, sir.

10 THE COURT: All right.

11 MR. FELDSHUH: It has been called to my attention
12 that under date August 30, 1974, the Government served a five
13 supplemental bill of particulars wherein the Government
14 endeavored to include as a further object of the conspiracy --
15 that the Government alleges that an additional object of the
16 conspiracy was to conceal and prevent discovery of the con-
17 spiracy. This continued up through and including the date
18 of the filing of the indictment.

19 THE COURT: Perhaps I haven't made myself clear
20 on that.

21 I don't understand that the bill of particulars
22 is designed as a device whereby a Government lawyer can amend
23 the grand jury's indictment.

24 MR. FELDSHUH: I am satisfied with that comment,
25 your Honor. Therefore, with regard to any --

1 gab-9

2 THE COURT: I have let in post indictment evidence
3 which could be from some people's viewpoint at least viewed
4 as concealment activities, but not because of that bill
5 of particulars item which I would think is nothing but an
6 unwarranted and unjustified rewrite of the indictment.

7 MR. FELDSHUH: Right.

8 THE COURT: I am not going to read that to the petit
9 jury and I am not going to let any lawyers claim that the
10 indictment was so amended.

11 MR. FELDSHUH: Very good, sir. Thank you very
12 much.

13 MR. GOULD: I assume at an appropriate moment
14 you will take a motion to strike if we find anything that came
15 in under that --

16 THE COURT: That is the reason why I mentioned it.
17 I let in a lot of post, how shall I put it, post major
18 event testimony to indicate either criminal intent or criminal
19 scienter or lack thereof or, as it is usually put, guilty
20 knowledge or lack thereof. I certainly never ever heard,
21 let alone seen it approved by the Courts, the practice of
22 rewriting an indictment through a bill of particulars.

23 MR. GOULD: My only point is, when your Honor let
24 that material in, there was still open, for example, the
25 obstruction of justice counts.

1 gab-10

2 THE COURT: I am sorry.

3 MR. GOULD: That is what concerned me.

4 THE COURT: I beg your pardon.

5 MR. GOULD: Now in the state of the record with
6 those counts out, some of the perjury counts out, with the
7 narrowing of the means paragraphs, the overt acts, I assume
8 your Honor will entertain motions at some appropriate time
9 before the case goes to the jury to strike anything we can
10 find that obviously came in under those counts?

11 THE COURT: We have already done one thing. We
12 have stricken the Martin Frank backed affidavit, 42A, which
13 Mr. Sorkin, with full credit to him, pinpointed for us.
14 Surely you are quite right.

15 MR. GOULD: When we go through on requests to
16 charge and preparation for summation, as we come to this
17 stuff, we will make a motion.

18 THE COURT: Fine. Excellent.

19 MR. GOULD: Thank you, your Honor.

20 MR. FELDSHUH: Your Honor, at the end of Feeney's
21 testimony you had indicated to me that you were going to
22 take testimony with regard to events occurring during the
23 years '68 and '69 subject to connection.

24 With regard to that area, your Honor --

25 THE COURT: I went further than that.

1 gab-11

2 MR. FELDSHUH: And there are other places, too,
3 your Honor.

4 THE COURT: There was a considerable amount of
5 testimony that Mr. Feeney gave as to events in Switzerland,
6 most particularly Zurich, of course, which, as I recall it
7 and as I understand it, has nothing really in the direct
8 sense to do with Frank at all.

9 MR. FELDSHUH: Right.

10 THE COURT: I believe according to my notes that I
11 ruled that all of this was being received as to Stoller only.

12 MR. FELDSHUH: You did rule --

13 THE COURT: There was some testimony, as you in-
14 ferred, where Feeney talks about events in '69 in relation
15 to Training With the Pros.

16 MR. SORKIN: Your Honor, if I may, to help the
17 Court, I think there is a meeting that Mr. Feldshuh is refer-
18 ring to where he goes up to the apartment and sees Mr. Allen
19 on the exercycle. That is in January of '69.

20 THE COURT: That is right.

21 MR. SORKIN: I think the next time, and I thought
22 your Honor took that as to all defendants -- the next
23 conversation I think is the December plane ride between Mr.
24 Stoller and Mr. Feeney which was not taken as to Mr. Frank,
25 the December 1971 plane ride.

1 gab-12

2 MR. FELDSHUN: May I point out, Page 1395 --

3 THE COURT: Gentlemen, I don't want to argue this.
4 Whatever the record shows, it shows. I am trying to say
5 I agree with you. I took the earlier testimony having to
6 do with the deal. I think that has been connected up as
7 to Frank, which only means a very minimal thing, namely, that
8 the jury can consider it against him if they believe on direct
9 evidence involving him he was in the conspiracy.

10 But then when Stoller and Feeney begin fluttering
11 across the Atlantic, to go and talk to Allen, who by that
12 time referring to Ramon D'Onofrio as that "guinea rat bastard,"
13 etc., etc., that doesn't strike me as being admissible as
14 against Frank.

15 I think I have ruled on that.

16 MR. GOULD: We are not going to do anything about
17 that now.

18 THE COURT: No, there is nothing we can do. What-
19 ever I said I said. Then if you want me to change the ruling,
20 you have to let me know what you want changed and how you
21 want it changed.

22 Good day.

23 MR. SORKIN: One last thing, your Honor. How do
24 you want us to excise or clean up the indictment? Some
25 Judges want a typed new indictment, others -- I really don't

1 gab-13

2 know. I am asking the Court's guidance on this.

3 THE COURT: I think the best way is to take a
4 pair of scissors and cut out the excluded portions and then
5 staple them back on a back piece of paper.

6 MR. GOULD: One other thing we have done is just
7 X them out, put a piece of paper over the existing indict-
8 ment.

9 THE COURT: These weighty matters I don't really
10 think I need to get into at all, certainly not today. We
11 are not going to the jury. There are several ways. I don't
12 quarrel with what Mr. Gould says. I like my way better.
13 I am not going to fight about it.

14 Good day.

15 (Adjourned to October 7, 1974, at 9:30 A.M.)

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United States of America

vs.

74 Cr. 159

Philip Stoller and Martin Frank

New York, New York.
October 7, 1974

(Trial resumed.)

(In open court; jury present.)

THE COURT: Good morning. Notwithstanding the
crumbling elevator system and everything else we are all
here at last.

Is the defense ready to go forward?

MR. GOULD: Yes, indeed, your Honor. Before we
do may I safely assume that your Honor will give appropriate
instruction with respect to the outcome of the motions?

THE COURT: I certainly intend to do just that.

MR. GOULD: Thank you.

There is one other matter, your Honor, which
I think should precede that which I think Mr. Sorkin had
better explicate.

THE COURT: Does that have to be done now?

MR. GOULD: It should be said before the
defense, your Honor.

MR. SORKIN: It should be said before the defense
puts its case on.

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2 MR. GOULD: I think it is a Brady problem.

3 THE COURT: You gentlemen will have to come up
4 to the side bar.

5 (At the side bar.)

6 MR. SORKIN: Your Honor, this past Friday even-
7 ing after I had left the office John Flannery, Assistant
8 U.S. Attorney, received a telephone call from Marilyn
9 Herzfeld. The substance of the call was "To have Sorkin
10 call me." I called her Saturday morning and she repeated
11 to me what she told Mr. Flannery, namely -- and I am trying
12 to give my best recollection of what she said -- that after
13 she left the courtroom she had been thinking very hard about
14 that indication letter, Exhibit 4, and that she received a
15 call from Mr. Frank's office who had asked her to see if she
16 could find the letter.

17 She said she had been thinking about it since
18 she left here and she recalls now that she destroyed the
19 letter in 1972 after going through certain files on Training
20 With the Pros and that is in substance what she said. My
21 recollection of the testimony of Mr. D'Onofrio is that he
22 said that Frank told him in July, June or July of '69, that
23 the letter was destroyed, but he didn't know if it was, and
24 the testimony of Herzfeld is that after May 27 she didn't
25

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2 recall seeing the letter again.

3 I point this out to the Court and I pointed it
4 out to defense counsel for whatever worth they want to
5 make of it.

6 MR. FELDSHUH: Also, in April of 1969 at an
7 alleged meeting they stated that Frank --

8 THE COURT: I don't know what you are talking
9 about. I can't even hear you, Mr. Feldshuh.

10 If you want to discuss anything with counsel,
11 please don't do it on my time. I don't think it is fair.
12 If you want to discuss something outside, discuss it, but
13 let's not do it here at the side bar.

14 Where are we?

15 MR. SORKIN: I think we had an obligation under
16 Brady versus Maryland to point this out to defense counsel
17 and we have so pointed it out and they can do whatever they
18 want.

19 MR. GOULD: What we would have to do is recall the
20 woman unless counsel will stipulate that if she were recalled
21 she would so testify.

22 THE COURT: I don't know what you should do.

23 MR. SORKIN: Let's take the time now and work
24 it out.

25 THE COURT: If you want to recall her, you may

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do so. My suggestion is that you recall her.

(In open court.)

MR. GOULD: If your Honor please, we will
call Mr. Adams.

THE COURT: No.

MR. GOULD: I am sorry, I forgot.

2 THE COURT: Mrs. DeBartolla and ladies and gentle-
3 men, the day after we last saw you last week there were
4 certain rulings made by the Court which you are to know
5 about now.

6 I will repeat these to you before we conclude
7 here at the trial, so don't worry about it, you will hear
8 them again.

9 Let me tell you now what happened.

10 You will recall that in the basic indictment, so-
11 called, there were a number of what lawyers call false
12 statement counts alleged against the defendant Stoller only,
13 and the Court has directed an acquittal of Stoller on certain
14 of those counts, 11, 12, 13 and 15, leaving open counts 14
15 and 16 for decision in the case.

16 The Court has also directed an acquittal and dis-
17 missed the so-called obstruction of justice counts which were
18 in the subsequent indictment, which you remember was con-
19 solidated with the original indictment. By agreement of
20 all counts and you were told that as we started the trial.
21 Those obstruction counts were alleged against the defendants
22 Frank and Stoller. And the Court has dismissed those par-
23 ticular counts.

24 Except for those counts which have been dismissed
25 why, of course, the remainder will be continuing in the case

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2 until you are told to the contrary, if I ever make any other
3 rulings on the matter.

4 As matters now stand that is what has happened.

5 All right, Mr. Gould.

6 MR. GOULD: Mr. Adams, please.

xx 7 M I C H A E L A D A M S, called as a witness by the
8 defense, having been first duly sworn by the Clerk of
9 the Court, testified as follows:

xx 10 DIRECT EXAMINATION

11 BY MR. GOULD:

12 Q Mr. Adams, what is your business?

13 A Deputy United States Marshal.

14 Q Here in this building, the Southern District of
15 New York?

16 A Yes.

17 Q And in connection with your duties in the marshals
18 office, do you have something to do with vouchers for wit-
19 nesses?

20 A Yes, I do.

21 MR. GOULD: I am going to object now, your Honor.
22 I would ask Mr. Gould for an offer of proof with respect to
23 this particular witness. I think I know what the witness is
24 going to say and I think I should make my objection at this
25 time.

1 jge

Adams - direct

2244

2 THE COURT: All he has told us is, if I under-
3 stand it, that he has something to do with vouchers. I
4 assume we are going to mark some vouchers.

5 MR. GOULD: That is all I am going to do.

6 THE COURT: Let's get on with it instead of all
7 this carping. Go ahead.

8 Q These papers which I hand you, sir, were they pro-
9 duced by you and delivered to me this morning?

10 A Yes, they were.

11 MR. GOULD: Would you mark them, please.

xx

12 (Stoller Exhibit AA marked for identification.)

13 Q Just a word of explanation.

14 What are these green sheets which have been marked?

15 A Our copies of the witness attendance certificates.

16 Q And the white sheets on top of them?

17 A They are also the witness attendance certificates.

18 They are obsolete now. The green ones replaced the white
19 ones.

20 Q You have gone to a different form?

21 A Yes.

22 Q You used the green ones and then the white ones.

23 All of these relate to the attendance of one
24 witness, do they not?

25 A Yes.

1 jge

Adams - direct

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2 Q What's his name?

3 A Ramon D'Onofrio.

4 Q And, sir, they cover the period from May of 1973
5 to September 1974, correct?

6 A That's correct.

7 Q Did you run a tape as to how much was paid in
8 witness fees to Ramon D'Onofrio during that period?

9 A Yes, I did.

10 Q Is this the tape on the top of it?

11 A Yes.

12 Q What's the total?

13 A \$31,588.10.

14 MR. GOULD: I offer them in evidence.

15 MR. SORKIN: No objection, your Honor.

16 MR. GOULD: Before I show them to the jury, your
17 Honor, may I ask the witness one other question?

18 THE COURT: Yes.

19 Q Mr. Adams, do you have any back up material in
20 your files on this such as airline tickets, hotel bills,
21 anything like that?

22 A No.

23 Q This is all you have, is that correct?

24 A Yes.

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25 (Stoller Exhibit AA received in evidence.)

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Adams - direct

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MR. GOULD: Ladies and gentlemen, these represent the vouchers on the basis of which the Government paid Mr. D'Onofrio over the period from May '73 to September '74 the sum of \$31,588.10.

You will see that all they show is the signature of an assistant United States attorney and Mr. D'Onofrio's statement as to where he came from and what he did.

Q May we keep these and we will return them to you?

A Yes.

MR. GOULD: Thank you, I have no further questions.

1 gawe Adams - cross 2247

2 MR. SORKIN: May I, your Honor?

3 THE COURT: Yes.

4 CROSS EXAMINATION

5 BY MR. SORKIN:

6 Q Let me just show you one marked for March 22, 1974,
7 first long green sheet.

8 Would you tell us, Mr. Adams, what these numbers
9 down here indicate and who writes that in?

10 A The numbers on the bottom section represent the
11 mileage and the number of days the witness was in attendance.
12 They are written in by an employee of the Marshal's office.

13 Q Is there a set figure for how much a witness
14 gets paid?

15 A Yes, there is.

16 Q Is it true for Mr. D'Onofrio as well as every
17 other witness who gets a witness voucher?

18 A Yes, it is.

19 Q What is the set fee?

20 A Ten cents a mile from the point of residence to
21 the point of call, \$20 a day attendance fee and \$16 a day
22 subsistence fee.

23 Q What is a subsistence fee?

24 A It is payment for witnesses that are required to
25 stay in town overnight that come from far away areas.

1 gawe Adams - cross 2248
2 Q In other words, how much was that \$16?
3 A \$16 for subsistence.
4 Q In other words, that \$16 has to cover a hotel
5 and food, is that correct?
6 A That's what -- yes.
7 Q The \$20 is a normal witness fee that every
8 witness gets for being called to the courthouse?
9 A That's correct.
10 Q May I see that again, please?
11 Do you have schedules downstairs where you compute
12 mileage?
13 A Yes. We used Rand McNally mileage.
14 Q In other words, these figures are written in by
15 the marshal or deputy marshal after computing the mileage?
16 A It's already precomputed on the cards. We have
17 the mileage for use about every city in the United States.
18 Q In other words, coming in from Las Vegas, Nevada,
19 on March 22 you computed the mileage of --
20 MR. GOULD: I object to the form of the question.
21 There's no proof he came in except what the paper says.
22 MR. SORKIN: I'm entitled to go by what the paper
23 says, your Honor.
24 MR. GOULD: There is a way to ask the question.
25 THE COURT: I think there's no problem, Mr.
Sorkin.

1 gawe

Adams - cross

2249

2 The approach is wrong.

3 Why don't you just rephrase it.

4 MR. SORKIN: All right. Let me start again,

5 Mr. Adams.

6 Q Can you look at this green sheet and tell us,
7 please, what the marshal's office computes as the round trip
8 mileage between Las Vegas, Nevada and New York City, the
9 Southern District of New York?

10 A 5,160 miles.

11 Q That would mean five \$16 round trips?

12 A That's correct.

13 Q The first series of sheets here, the small white
14 sheets, shows R. D'Onofrio, St. Petersburg, Florida, May 8,
15 9, 10 and 11, 1973, signed by D. M. Brodsky.

16 Is there any computation on this?

17 A Yes, there is on the back.

18 Q Where is that?

19 A The mileage, attendance fee and the subsistence
20 fee.

21 Q Who computes that, sir?

22 A We compute that all.

23 Q In other words, the green sheets and the white
24 sheets really say the same thing, they are just different
25 forms?

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Adams - cross

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2 A That's correct.

3 Q What is the mileage from St. Petersburg to
4 New York as computed by the Rand McNally -- as you compute
5 it using the Rand McNalley Atlas?

6 A 2,410 miles.

7 Q Round trip?

8 A Round trip.

9 Q Which is \$241?

10 A That's correct.

11 Q Is any consideration given to whether the witness
12 comes in by plane or car or train, first class, tourist?

13 MR. GOULD: I object to that as to its form,
14 your Honor.

15 THE COURT: I'm sorry. I don't really fathom
16 that.

17 MR. GOULD: May we have it read?

18 THE COURT: I understand your objection. I don't
19 understand the question. I'm not sure you intended it that
20 way.

21 MR. SORKIN: Let me rephrase the question.

22 Q If the witness comes in by plane, Mr. Adams, first
23 class, which would cost more than tourist, does he get the
24 additional sum for first class?

25 MR. GOULD: I object to that.

There's a way to elicit this.

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Adams - cross

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2 THE COURT: I don't understand the significance
3 of this. I don't quite get it.

4 MR. SORKIN: Let me rephrase the question then,
5 your Honor.

6 THE COURT: What difference does it make anyhow?
7 I don't understand you. Is there any distinction that is
8 important for our case as between first or second class?

9 MR. SORKIN: If I can rephrase the question and
10 give it one more go, your Honor, I would like to try.

11 THE COURT: Fair enough.

12 Q Mr. Adams, does the marshal's office compute the
13 mileage based upon the manner of transportation?

14 A No.

15 MR. SORKIN: No further questions.

xx 16 REDIRECT EXAMINATION

17 BY MR. GOULD:

18 Q Mr. Adams, when you pay out on one of these
19 things, you pay out on the certification of the United States
20 Attorney, is that correct?

21 A Along with the witness.

22 Q In other words, when he presents this to you,
23 you see that the U. S. Attorney says okay, isn't that it?
24 Isn't that what that signature says down at the bottom?

25 A Yes, he's certifying that the witness attended on

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Adams - cross

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these days.

Q That's right. As to the mileage, you have nothing but the word of the witness, isn't that right?

A The amount of mileage?

Q As to where he came from.

A That's correct.

Q You didn't have an airplane ticket, correct?

A Correct.

Q You didn't have a bus ticket?

A That's correct.

Q You didn't have a hotel bill, you didn't have anything except what D'Onofrio told you?

A That's correct.

MR. GOULD: Thank you very much.

MR. SORKIN: No further questions, your Honor.

THE COURT: Thank you, Mr. Adams. You may be excused.

(Witness excused.)

MR. GOULD: We will call Mr. Joseph Arden, your Honor.

xx

J O S E P H A R D E N, called as a witness by the defense, having been first duly sworn by the Clerk of the Court, testified as follows:

XX

1 gawe Arden - direct 2253

2 DIRECT EXAMINATION

3 BY MR. GOULD:

4 Q Mr. Arden, can you hear me all right?

5 A I can hear you.

6 Q I'm going to stand here. I understand you have
7 some difficulty in projecting your voice.

8 A It isn't difficult, it is a -- that's about the
9 loudest I can speak. If they can't hear me, I have a bull-
10 horn. If the jury can't hear me, I'll put the bull horn on.

11 Q Let's see if we can get along this way.

12 I am going to speak very slowly and you speak
13 very slowly and very distinctly and I'm sure the jurors
14 will be able to hear you.

15 Mr. Arden, in 1968 and 1969 where were you
16 employed?

17 A Stoller, Allen Survey.

18 Q Where was that located, sir?

19 A 118 East 60th Street in Manhattan.

20 Q Prior to that where had you been employed?

21 A I was Post Office Supervisor, retired, due to
22 disability, heart attack.

23 Q And then you went to work with Mr. Stoller and
24 Mr. Allen, is that right?

25 A Correct, sir.

1 gawe Arden - direct 2254
2 Q Had you known them or either of them for a
3 long time?
4 A I knew Mr. Stoller for a period of -- well,
5 close to 20 years.
6 Q I see.
7 MR. GOULD: Can you jurors hear him all right?
8 JURORS: Yes.
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Q You are doing fine, Mr. Arden. Thank you very

much.

While you were working there with Mr. Stoller and Mr. Allen, did there come to your attention a company called Training With the Pros?

A There did, right.

Q Do you remember how it came to your attention,

the first time you heard about it?

A Mr. Stoller and Mr. Allen were discussing it.

That is how it came to my attention.

Q Do you remember what they said about it?

A They said --

Q In substance.

A In substance, that it was --

MR. SORKIN: May we have a place, your Honor?

MR. GOULD: I thought he said at the office.

Perhaps I overlooked it.

MR. SORKIN: And if anyone else was present.

Q This was at the office, was it?

A Yes.

Q Was anybody else present other than you, Stoller

and Allen?

A At that time, no, sir.

Q I see. Just in substance what did they say about

1 gab-2

Arden-direct

2 it?

3 A They said it was a company -- it was a vocational
4 program and at that time, in '68, '69, due to the underprivi-
5 lege it would fill a void of vocational schools that could
6 learn a trade within six weeks and do mechanical work on
7 cars.

8 That was the main substance.

9 Q I see. Did there come a time later on, Mr.
10 Arden, when you had a conversation with either Mr. Stoller or
11 Mr. Allen about a thousand shares?

12 A There did.

13 Q Where did that conversation take place?

14 A Also in 118 East 60th Street.

15 Q Who was present, sir?

16 A Mr. Allen and Mr. Stoller.

17 Q And yourself?

18 A Naturally.

19 Q All right. Would you tell us, please, in substance
20 what that conversation was as best you remember it?

21 A I believe it was in January of '69. They told
22 me, Mr. Stoller and/or Mr. Allen -- I can't --

23 Q You can't now distinguish who said what, is that
24 it?

25 A That's right. It was -- one may have spoken one

1 gab-3 Arden-direct 2257
2 word and another spoke the other word. Between the both of
3 them, I am trying to give you the conversation as of both
4 collectively.

5 Q That's r ight.

6 A One may have said one word, the other, and I
7 couldn't say - they told me to put an indication -- it
8 was a new company starting to put an indication in for a
9 thousand shares of Training With the Pros.

10 I asked him if I could put my wife in, and they
11 told me, yes. I put my wife in for an indication for a
12 thousand shares of Training With the Pros. I don't know
13 whether I was going to get it, but I put an indication in.

14 Q Do I understand you put in two indications, one
15 for yourself and one for your wife?

16 A Correct, sir.

17 Q Each for a thousand shares, right.

18 A Right.

19 Q Thank you. Go ahead with anything else you
20 remember about the confersation.

21 A They told me -- I believe it was at that same
22 time -- they told me if I would get the shares and if my
23 wife got the shares, not stating how many shares we would
24 get -- we put the indication in for a thousand shares. They
25 would purchase -- by "they" I mean Mr. Allen. I distinctly

gab-4

Arden-direct

remember it was Mr. Allen, Jerome Allen. He stated he would purchase the shares back from me and my wife for \$8.25 a share.

In other words, if I got the thousand shares, I had to put up 7000 naturally and my wife had to put up 7000. I would get back \$8250 for each thousand shares that I got.

Q Did you get a thousand shares for yourself?

A I did.

Q And did you get a thousand shares for your wife?

A Yes, sir.

Q Who is Mr. Tolansky?

A Mr. Tolansky is my brother-in-law, my sister's husband.

Q Did he get a thousand shares?

A Correct, sir.

Q Was it handled the same way?

A His shares I believe Mr. Stoller purchased, not Mr. Allen. I believe it was Mr. Stoller.

Q I see. Now, sir, did you put up your own money for these shares?

A Yes, sir.

Q And your wife put up her own money for the shares?

A When you say our own money, it is both collectively. I mean to say, we haven't had any individual accounts,

1 gab-5

Arden-direct

2 sir.

3 Q It came out of your own account?

4 A That's right. My wife and I, we are partners.

5 Q You kept the profit?

6 A We put it in the bank, not I kept it, no. We
7 put it in the bank, I believe, sir, I have notification of
8 withdrawals and deposits.

9 Q Yes. Sir, before you bought the shares did you
10 discuss with Mr. Allen or Mr. Stoller whether you should go
11 over to Training With the Pros and see what it was all
12 about?

13 A Definitely. I wanted to see what it was. I
14 thought it would fill a void. In other words, I thought
15 it was very, very good. I went over there several times.
16 They were situated, I believe it was the Hotel Cameron,
17 and I believe it was West 86th Street.

18 Q Did you meet anybody when you went there?

19 A I met two people.

20 Q Who were they?

21 A I met Mr. Bud Moss. He told me he was the
22 president. I met -- I think it was a Miss Herzfeld, M.
23 Herzfeld.

24 Q Marilyn Herzfeld, does that help you?

25 A It was M, Marilyn Herzfeld.

1 gab-6

Arden-direct

2 Q Yes. Did you have a conversation with those
3 two people or either of them?

4 A I had conversations with them several times.

5 Q About the business?

6 A They showed me how it worked and all. I took
7 an interest in it.

8 Q All right. And then there came a time, did
9 there not, when you sold your shares to Mr. Stoller and Mr.
10 Allen, is that right?

11 A Correct, sir.

12 Q Yes. Now, sir, while you were working there at
13 Stoller and Allen, did you hear them discuss anything about
14 Training With the Pros with any brokers? Do you remember any
15 conversations with brokers?

16 A It is possible. I can't put a finger on it.
17 It is very possible. I really wouldn't know, sir.

18 Q All right. Do you know a man named Joseph
19 Bonavia?

20 A I do.

21 Q How long have you known Mr. Bonavia?

22 A Either '68 or '69. I would say that is when I
23 met him, about '68 or '69.

24 Q What was Mr. Bonavia's relationship with
25 Stoller and Allen, if you know?

1 gab-7

Arden-direct

2 A I was given to understand, sir --

3 MR. SORKIN: Your Honor, I object. If it came
4 out in any conversation --

5 MR. GOULD: We will get the conversation. I
6 am leading, I know. I think it is necessary here.

7 MR. SORKIN: I haven't objected up to this
8 point, your Honor.

9 THE COURT: Gentlemen, please. I agree with this
10 objection. Let's clarify what we are really asking this
11 witness.

12 MR. GOULD: Very good, your Honor.

13 Q Did anybody there tell you what Mr. Bonavia's
14 relationship was?

15 A Yes.

16 Q Who told you?

17 A Mr. Stoller and/or Mr. Allen.

18 Q What did they tell you?

19 A That he was a client of theirs. They were finan-
20 cial consultants, Mr. Allen and Mr. Stoller, and he was a
21 client of theirs.

22 Q Now, sir, do you remember Mr. Bonavia coming
23 into the office some time in February or March of 1969?

24 A I do.

25 Q When he came there, who was present?

gab-8

Arden-direct

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A Just Mr. Stoller.

3

Q Was there a conversation --

4

A And myself, naturally.

5

Q You, Mr. Stoller and Mr. Bonavia, right?

6

A Correct, sir.

7

Q Do you remember the conversation which took

8

place at that time?

9

A It was --

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Q With respect to Training With the Pros?

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A It was in reference to Training With the Pros.

End 2B

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Arden-direct

1 Q Would you be good enough, Mr. Arden, to
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3 tell his Honor and the jury what you remember about that
4 conversation?

5 THE COURT: He has to catch his breath.

6 Q Take your time, Mr. Arden. We all understand
7 your problem.

8 A Mr. Bonavia was speaking -- at that time, if I
9 recollect, he apparently had certain things in mind. He
10 seemed to be suffering with a heavy cold. I remember he was
11 sitting or lying on the couch, in other words, relaxing on
12 the sofa there. They were discussing Training With the
13 Pros.

14 He asked Mr. Stoller what looked good. Mr.
15 Stoller told him that they had a stock, Training With the
16 Pros, that was potentially very good, speculative but it
17 had good potentials.

18 He explained the entire matter of Training With
19 the Pros, what it was about, educational.

20 At the end of the conversation, at the end of
21 his talk Joe Bonavia asked Mr. Stoller to call Switzerland
22 and get him 10,000 shares. I recollect that conversation.
23 Mr. Stoller told him that he would not call Swit zerland.
24 He would not get the 10,000. If he wants it let him go
25

qb-2

Arden-direct

1 through his own broker and secure the 10,000 shares. That
2 is what I can recollect of the conversation.
3

4 Q Was there anything in the conversation, sir,
5 about Mr. Bonavia going over to see the people at Training
6 With the Pros?

7 A He mentioned where they were. In this conversa-
8 tion he told them exactly where they were, where they were
9 situated. I believe he mentioned the names of the president
10 and officials.

11 Q After you heard Mr. Stoller tell Mr. Bonavia that
12 if he wanted the stock he should order it himself, do you
13 know what Mr. Bonavia did?

14 A I do not, sir.

15 Q You don't know?

16 A I do not.

17 Q Mr. Arden, did you ever meet a man named James
18 Feeney?

19 A I have heard the name, but I have never met him.

20 Q Did you ever see him in your office there?

21 A I stated I never met him.

22 MR. GOULD: Thank you, I have no further
23 questions.

24 MR. FELDSHUH: Your Honor, I have a few questions.
25

qb-3

Arden-cross

CROSS-EXAMINATION

BY MR. FELDSHUH:

Q Mr. Arden, do you know Mr. Frank?

A I know Mr. Martin Frank, yes, sir.

Q Do you see him in the room here?

A Yes, there he is. He just rose from the chair.

Q Did there come a time in February or March of 1969 when you had a talk with Mr. Allen with regard to signing some papers which had to do with the transfer of Training stock to him? Do you remember that, sir?

A That was closer to the latter part of February. I believe it was the latter part of February.

Q The latter part of February?

A I believe it was the latter part of February.

MR. FELDSHUH: Mr. Sorkin, could I have Government Exhibits 21 through 25, please?

MR. SORKIN: Sure.

Q Mr. Arden, I show you Government Exhibit 21 in evidence and I ask you, sir, is that a copy of your signature?

A That is my signature, sir.

Q I show you Government Exhibit 22 and I ask you, sir, is that a copy of your wife's signature?

A It is.

Q Sir, looking at those papers, Government Exhibits

qb-4

Arden-cross

21 and 22, I ask you, sir, where did you sign those papers?

A These papers notarized by Martin Frank were signed in Marty Frank's office. I believe that was on East 44th Street.

Q Was your wife there and did you see her sign those papers?

A My wife was with me at the time.

Q Thank you very much, Mr. Arden.

MR. FELDSHUH: I have no further questions.

CROSS-EXAMINATION

BY MR. SORKIN:

Q Mr. Arden, I will be very brief, sir.

Can you hear me all right?

A Yes.

Q Mr. Arden, did you have a Swiss bank account?

A No.

Q Did you ever open up an account in the name Stanley, your son's name?

A I never had a Swiss bank account.

Q Did Mr. Allen open up one for you, sir?

MR. GOULD: I object to this. This is not appropriate for an examination.

THE COURT: I disagree. I will allow this.

MR. GOULD: How about the form of the question,

1 your Honor?

2
3 THE COURT: I think it would be in a better
4 form.

5 MR. SORKIN: This is cross.

6 THE COURT: Go ahead.

7 Q Did Mr. Allen open up a Swiss bank account
8 for you in your son's name?

9 A He told me he would but he never did.

10 Q Did you ever give him \$1000 to do it?

11 A I gave him the \$1000 to open an account.

12 Q And your son's name is Stanley, is that correct?

13 A Correct.

14 Q And the account was opened in the name of Stanley?

15 A It was never opened.

16 Q Mr. Allen came to you and asked you if you wanted
17 to open one, is that correct?

18 A He suggested that I give him \$1000 to open a
19 Swiss bank account. That was the answer.

20 Q How long have you known Mr. Stoller, Mr. Arden,
21 in years?

22 A I would say close to 20 years.

23 Q You are very fond of him, aren't you?

24 A I like him, absolutely.

25 Q In fact, you would consider Mr. Stoller a son,

qb-6

Arden-cross

1 wouldn't you?

2
3 A I have two sons and I can classify him as a son.
4 I like him.

5 Q You do like him?

6 A I do.

7 Q Mr. Feldshuh asked you, Mr. Arden, with respect
8 to Exhibits 21 --

9 A Was that Mr. Feldshuh?

10 Q Yes. Mr. Feldshuh asked you with respect to
11 21 and 22. 21 you said was your signature in Mr. Frank's
12 office?

13 A Right.

14 Q And 22 was your wife's?

15 A My wife's, yes.

16 Q Did anyone ask you to come down to Mr. Frank's
17 office to sign this?

18 A Mr. Allen.

19 Q Mr. Allen asked you?

20 A Correct.

21 Q Did you go to Mr. Frank's office to have Mr.
22 Frank notarize your signature?

23 A I did.

24 Q Did Mr. Frank tell you why he was notarizing your
25 signature?

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A No, sir.

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Q He didn't?

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A To me -- you know I am a common layman. When they give that to me, I assume it is to make it legal the

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transfer of 1000 shares. I don't question it. It says

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I am sending him the 1000 shares for X amount of dollars.

8

Q You don't know why Mr. Frank notarized it?

9

A To me it was a legal transaction. I don't know the wys or wherefors.

10

11

Q Have you ever had documents notarized before?

12

A Yes, years ago.

13

14

Q Do you know why Mr. Frank didn't put a date in here?

15

MR. GOULD: That is objected to, your Honor.

16

THE COURT: I am going to sustain that.

17

18

Q Was there any conversation with Mr. Frank concerning a date of his notary?

19

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A I don't ask the person when they notarize. I don't look at dates or anything. I don't know those things. I am not a law student when it comes to laws.

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THE COURT: I don't think anyone is really suggesting that, Mr. Arden. The question is: Do you recall any conversation with anybody when those documents were signed?

qb-8

Arden-cross

1 THE WITNESS: Not in Mr. Frank's office. He
2 just signed the documents and that was it, sir.

3 THE COURT: That is all you remember?

4 THE WITNESS: Correct, sir.

5 MR. SORKIN: May we have this marked as
6 Government Exhibit 110 for identification, please.

7 THE COURT: You said you used to work for the
8 post office department.

9 THE WITNESS: Correct.

10 THE COURT: Where and when?

11 THE WITNESS: I was with the GPO in Brooklyn,
12 New York.

13 THE COURT: What did you do for them?

14 THE WITNESS: Before I left there I was post
15 office supervisor.

16 THE COURT: What do you mean by that?

17 THE WITNESS: I was in charge of a group of the
18 outgoing mail assigning. At that time we had about
19 six to 800 clerks, I assigned them to different stations where
20 the mail was heaviest. They would either box the mail or
21 take the mail and cull it. We used to call it culling mail.
22 To explain the term of culling, mail would come in sacks --

23 THE COURT: I don't want to burden you with all
24 that. You were in charge of those people, is that what you
25

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Arden-cross

are telling us?

THE WITNESS: Correct.

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1 THE COURT: How many years were you with the
2 Post Office Service?
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4 THE WITNESS: Eight years with them.

5 THE COURT: Eight years?

6 THE WITNESS: Correct.

7 I was considered an honor pupil --

8 THE COURT: No, please. I just want to know.

9 THE WITNESS: Eight years.

10 THE COURT: What did you do for this Stoller-
11 Allen Survey?

12 What was your job there?

13 THE WITNESS: The Stoller-Allen Survey had a
14 public agency and I was in charge. In other words, sub-
15 scribing. They advertised in the Times in reference to
16 public agencies they issued with reference to stock.

17 THE COURT: What did you do?

18 THE WITNESS: My job was to have the subscription
19 list and to mail it out to them.

20 THE COURT: How often did you do that?

21 THE WITNESS: Physically, I would say possibly,
22 two, three hours a day, maybe three days a week, sir.

23 THE COURT: They put out a letter of some kind to
24 their customers?

25 THE WITNESS: That is correct.

2 THE COURT: Was it a weekly letter, a monthly
3 letter?

4 THE WITNESS: It was a monthly letter.

5 THE COURT: Your job was to see to it that it was
6 mailed out to whoever it went?

7 THE WITNESS: Whoever subscribed.

8 THE COURT: That is all you did for Stoller-
9 Allen Survey?

10 THE WITNESS: That is right, that was my job.

11 THE COURT: And you went to the address you gave
12 us, 118--

13 THE WITNESS: East 60th Street, yes.

14 THE COURT: What time did you go there in the
15 morning?

16 THE WITNESS: 9, 10 o'clock, 11 o'clock.

17 THE COURT: It varied?

18 THE WITNESS: Yes, and how I felt. If it was a
19 real cold, nasty day, I didn't go.

20 THE COURT: How long did you stay there roughly?

21 THE WITNESS: Four hours, three hours. Before
22 the rush-hour -- I would definitely leave before 4 o'clock,
23 3 o'clock or so in the afternoon.

24 THE COURT: Thank you.

25 Go ahead, Mr. Sorkin.

2 Q Let me continue one line that his Honor asked
3 you.

4 Were you there five days a week from 9 to 5?

5 A No, sir.

6 Q Four weeks out of the month?

7 A No, sir.

8 Q Quite often there were times when you were not at
9 118 East 60th?

10 A Correct. There were times when I was home,
11 sure.

12 Q Do you remember testifying at the SEC back on
13 July 14, 1969?

14 A I did testify before the SEC in '69.

15 Q The dates of Government's Exhibits 20 -- by the
16 way, you say you signed this, 21, and your wife signed 22
17 towards the end of February 1969.

18 Do you recall saying that?

19 A Yes, sir. I believe toward the end of February.

20 Q Do you recall when you testified at the SEC in
21 1969, sir?

22 A I believe it was June.

23 Q Why don't you look at 110 and see if that
24 refreshes your recollection?

25 A Was it June?

1 jqs Arden - cross 2274

2 MR. SORKIN: Will counsel stipulate it was July
3 14?

4 MR. GOULD: Of course, if the transcript says
5 July. What is the difference?

6 Q Mr. Arden, that was about four months after you
7 say you signed these in Mr. Frank's office?

8 A Yes, four to five months. If you say July, it's
9 five months.

10 Q Let me ask you this, sir.

11 Did you ask your wife to sign the document,
12 Government's Exhibit 22?

13 A Yes.

14 Q You did?

15 A Yes.

16 Q You are absolutely positive that it was signed in
17 Mr. Frank's office, is that correct?

18 A The ones you showed me, those there, were signed
19 in Mr. Frank's office.

20 Q These were signed in Mr. Frank's office?

21 A Yes.

22 Q And you call these a bill of sale?

23 A I don't know what you would call them.

24 Q What do you call them, sir?

25 A I call them a bill of sale. I call it a bill of

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Arden - cross

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2 sale.

3 Q Were you shown these by the SEC when you went
4 down to testify?

5 A This 1969, five years ago. If I have it in the
6 testimony, if I was shown them -- it is very probable, I
7 don't know.

8 Q Why don't you take a look at this and see if this
9 refreshes your recollection. Just the bottom, yes, don't
10 turn the page.

11 Don't read it out loud, please.

12 A You want me to read this?

13 Q Yes. Does that refresh your recollection?

14 A Yes, then I must have been shown that apparently.

15 Q These bills of sale.

16 A Yes.

17 Q Let me ask you this: Do you remember being
18 asked this question by the SEC.

19 "Q Mr. Arden, when you signed your bill of sale
20 and when your wife signed her bill of sale, was that done at
21 the same time?

22 "A Yes, sir.

23 "Q Where was this done?

24 "A Where?

25 "Q Yes.

2 "A In my home.

3 "Q In your home?

4 "A Yes.

5 "Q Who was present at that time?

6 "A Just my wife and I.

7 "Q Was Mr. Allen there?

8 "A No, sir."

9 Did you assume you knew Mr. Frank in July of
10 '69 because you said you knew him in February of '69, is that
11 correct?

12 A Yes, I knew Martin Frank.

13 Q The next question.

14 "Q Was Mr. Allen there?

15 "A No, sir.

16 "Q Was a Martin Frank there at that time?

17 "A No, sir."

18 MR. GOULD: I object to this. This isn't incon-
19 sistent. He didn't say it was signed in Frank's office. He
20 said they were notarized there.

21 MR. SORKIN: I beg to differ with Mr. Gould.

22 THE COURT: Unfortunately we have juries and that
23 is what the jury is here for.

24 Let's go ahead.

25 Q Let me go back, Mr. Arden and read it to you.

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Arden - cross

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"Q Was a Martin Frank there at that time?

"A No, sir.

"Q Do you know Martin Frank?

"A I have met him. I have met him. I believe he has offices in East 44th Street. I met him."

Do you recall being asked those questions and giving those answers? Just yes or no, Mr. Arden. I was to expedite this so you can get off the stand.

A If you have it, I must have answered that way, I am sure, because that must have been my answer.

Q Let me ask you again since Mr. Gould raised this: Where did you sign this, sir?

A Now you brought a question to my mind now. I have been thinking about this --

Q Let me ask you --

MR. GOULD: I think he ought to answer that.

THE COURT: I am sorry, Mr. Witness. You listen now and if you don't understand a question that this lawyer puts to you, you tell me.

THE WITNESS: Yes, sir.

THE COURT: But don't answer anything else, please.

THE WITNESS: All right, sir.

THE COURT: Put it to him clearly. Mr. Sorkin.

Q Mr. Arden, now, can you tell us where you signed

1 jce Arden - cross 2278

2 these?

3 A These were signed in Mr. Frank's office.

4 Q So your testimony before the SEC is incorrect,
5 is that correct?

6 THE WITNESS: Your Honor, I don't know whether I
7 can answer that correctly without asking your Honor.

8 THE COURT: What do you want to ask me?

9 THE WITNESS: It puts in mind that I think there
10 was another set besides that. I don't believe that these
11 are the ones that I took home. The ones I took home were
12 not notarized. They had my address on them. I think there
13 were two sets, your Honor.

14 THE COURT: You do?

15 THE WITNESS: According to my belief, yes. One
16 set I brought home and this set was notarized. That is my
17 belief honestly.

18 THE COURT: Let's have the question again.

19 MR. SORKIN: The question I believe --

20 THE COURT: Let's not have belief.

21 (Question read.)

22 THE COURT: Do you understand that, Mr. Arden?

23 THE WITNESS: My testimony before the SEC was
24 correct.

25 Q Let me ask you this, sir.

2 How did Mr. T. Lansky get involved with Training Wi
3 The Pros?

4 I will rephrase the question for you. That is
5 kind of broad.

6 Did Mr. Stoller or Mr. Allen ask you to get
7 Mr. T. Lansky to indicate for stock?

8 A I asked Mr. Stoller. It is my sister -- I only
9 have one sister. They are not well to do, average.

10 I asked him if they could put indications in for
11 1,000 shares.

12 Q You asked Mr. Stoller --

13 A And/or Mr. Allen. They were both together. If
14 he could put an indication in and to see if you can get
15 1,000 shares and whether they would do the same thing with
16 them. That is how they got the so-called -- what did you
17 say, involved?

18 Q I rephrased it. How did Mr. T. Lansky come to
19 buy the 1,000 shares?

20 A I explained to you that I asked them and they
21 told me that it's perfectly okay. I called up my sister and
22 I explained to her. I asked him if they could get \$7,000,
23 if they had \$7,000 to invest and that was the setup. If they
24 would get the stock, because there was no guarantee. It was
25 just a matter of indications, sir.

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Arden - cross

2280

2 Q Sarah Stritiver is your wife's maiden name,
3 correct?

4 A Correct.

5 Q Was there any reason why you used your wife's
6 maiden name rather than her married name?

7 Let me withdraw that question.

8 How long have you been married?

9 A 46 years November 10th.

10 Q 46 years November 10th.

11 A I was married November 10th.

12 Q Six years ago it was 40 years. Is there any
13 reason why you used your wife's maiden name back in 1968,
14 '69 rather than her married name?

15 A Yes.

16 Q Why don't you tell us.

17 A The reason was, to put the indication in I wanted
18 to see if I could get 2,000 shares. If I put down Mr. and
19 Mrs. Arden, in all likelihood I may have been cut down.
20 That was the reason. That is the reason why I put my wife's
21 maiden name down.

22 Q You had a joint account, is that true?

23 A Correct, sir.

24 Q The same funds, same money.

25 A Yes.

1	gawe	Arden - cross	2281
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Arden - cross

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2 Q Why didn't you put down for 2,000 shares?

3 A In all likelihood, I believe I wouldn't have
4 gotten it. We were discussing 1,000 shares. I don't -- I
5 can't say give me 2,000. I put an indication in for 2,000.

6 Q In other words, you really wanted 2,000 but you
7 used your wife's name to get the 2,000?

8 A If I can get the 2,000, I was willing to get the
9 2,000, sir.

10 Q Did anyone tell you that you couldn't get 2,000
11 if you just used your name?

12 A Never discussed it.

13 Q What led you to believe that you couldn't get
14 2,000?

15 A They were discussing 1,000. I didn't question
16 if I could get 2,000 or 5,000.

17 Q Mr. Stoller and Mr. Allen were discussing a
18 thousand shares?

19 A That's right.

20 Q I see.

21 Just a few more questions.

22 A Yes.

23 Q Do you know a woman by the name of Eleanor
24 Wein?

25 A Stock broker, yes.

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Q How about Walter Paruch?

A I have known both of them, to my -- well, I better not say it.

Q To your detriment?

A To my detriment.

Q You lost money with them?

A I lost quite a bit of money with them. I haven't had one good stock with them yet.

Q Did they recommend stocks to you?

A They did and I bought it through them.

Q How about Nathan Hyman?

A Nathan Hyman, I know him.

Q How did you get to Mrs. Wein?

A Nat Hyman, I made money with Nat Hyman. I lost money with the other ones.

Q All right.

Tell us, Mr. Arden, how you came to open up an account with Eleanor Wein?

MR. GOULD: I object to this, your Honor. This has nothing to do with our case.

THE COURT: Overruled.

Q How did you come to open up an account with Eleanore Wein, Walter Paruch and Nathan Hyman?

A Those are not the only ones.

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Q I understand. You had a lot of accounts.

A It is a penny anty stock, you always have plenty of accounts.

Through -- I've met them through Mr. Allen or Mr. Stoller. I have met them.

Q In other words, Mr. Allen and/or Mr. Stoller told you to go to them, to open up a brokerage account?

A No.

Q Then I misunderstand you.

Why don't you tell us.

A I met them -- they were doing business through Eleanor Wein and/or -- and Walter Paruch. I met them -- I says, "Look"-- they suggested certain things. As long as you suggest, open an account for me. I will buy 100 shares of XYZ stock at \$3 a share, so forth. That's how I opened an account.

Q In other words, as long -- you used the word "suggest." As long as Mr. Stoller and Mr. Allen were suggesting stocks to you, why don' you open an account?

MR. GOULD: That is not what he testified to, your Honor. He said the brokers suggested.

A The brokers suggested stocks to me.

Q My question is --

A The brokers suggested --

1 Q Let me ask the question. I'm sorry you mis-
2 understood me. The question was, if the broker suggested
3 the stocks to you, how did you first find the brokers?
4 Who told you about them? There are thousands of brokers.

5 A I explained to you that Mr. Steller and/or Mr.
6 Allen had accounts I believe -- through Eleanor Wein they
7 had -- they bought stocks through Eleanor Wein and/or
8 Walter Paruch.
9

10 They were both teamed up. They were both in the
11 same office. They seemed to be partners or something
12 together. When I went down to see Walter Paruch and/or
13 Eleanor Wein, I sat down and talked with them. They asked
14 me -- they told me, we just heard of a certain stock, XYZ
15 stock. Joe, we think -- I would say, all right, open an
16 account for me and buy me 100 shares of XYZ stock at \$3
17 or whatever it was. That's how I opened an account with
18 them.

19 Q Do you know a fellow by the name of Ramon
20 D'Onofrio?

21 A I have met him.

22 Q Where did you meet him?

23 A Also in 118 East 60th Street.

24 Q When?

25 A I would say -- I believe around '69.

1 gave Arden - cross 2295

2 Q Around '69.

3 A Beginning of '69?

4 Q Beginning of '69.

5 A Probably the beginning of '69.

6 Q Beginning of '69.

7 Did Mr. Stoller introduce you to him?

8 A I believe -- either Mr. Stoller or Mr. Allen.

9 One of the two probably introduced me to him.

10 Q What was he up in the apartment for.

11 MR. GOULD: I object to that.

12 Q If you know.

13 MR. GOULD: If he heard conversations --

14 THE COURT: Just a moment, please.

15 Could you read that question back. You keep
16 dropping your voice, Mr. Sorkin.

17 MR. SORKIN: I'm sorry, your Honor.

18 (Question read.)

19 THE COURT: I think that objection is well taken.

20 Rephrase it.

21 Q Prior to meeting Mr. D'Onofrio, Mr. Arden, did
22 Mr. Stoller tell you anything about him?

23 A No, sir.

24 Q He didn't?

25 A No, sir.

2 Q How about Mr. Allen?

3 A Neither one of them.

4 Q Were you there when he arrived or was he there
5 when you arrived?

6 A One time I can recollect I was there before he
7 arrived. The reason why I can recollect --

8 Q I'm sorry --

9 A One time I can definitely --

10 MR. GOULD: He hadn't finished his answer.

11 Q I didn't hear him, Mr. Gould. I'm sorry.

12 A One time I can definitely recollect that I was
13 there when he arrived. The reason why -- there are certain
14 things that stand out.

15 He told me he left his wallet in the car, I
16 should run over to the garage where he parked it to see if
17 his wallet was still in the front seat. That's how I can
18 recollect that I was there before he came. P.S. the wallet
19 was on the front seat and I brought it back to him.

20 Q Are you telling us that you saw him at the apart-
21 ment more than once?

22 A I believe he was there a couple of times.
23 I believe he was there more than once.

24 Q You didn't --

25 A I seen him possibly more than once, probably two

2 or three times.

3 Q And you didnt hear any conversation between him
4 and Mr. Stoller and Mr. Allen?

5 A No. I either did my business or I walked out
6 shopping. It is a beautiful shopping neighborhood, Bloom-
7 ingdale's, Alexander's, they are all there. Many a time --
8 frankly, when the clients would come in -- I call them clients
9 -- I don't know -- I would -- it was none of my business to
10 listen to their conversation. I would go ahead and do a
11 little shopping. It was on my own. In other words, you can
12 say I worked for them, but time was on my own.

13 Q You worked for Mr. Stollen and Mr. Allen?

14 A Yes.

15 Q Were you paid a salary by them?

16 A At that time I was. The time that salary was --
17 it was part time. It was more of a -- it was \$60 per week.

18 Q \$60 per week?

19 A Correct, sir.

20 Q All right.

21 Were you paid by Mr. Stoller and/or Mr. Allen
22 after 1968 and '69 for any services rendered to them?

23 A No. I was there for -- I call it therapy, sir.

24 I have been active since I was -- when I had to stay home --

25 Q My question is -- I want to speed this up.

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A I did not work for them in '69, '70. I did not
work for them. I was down there, but I did not work for
them.

Q Is Mr. Stoller giving you any money now, Mr. Arden?

A He would give me my expenses.

Q Is he giving you your expenses now, sir?

A Not right now. In other words, if I would go down to see him, I would take a cab. Just follow me, sir. I cannot travel in subways.

Q I understand. My question is: When was the last time he gave you expenses?

A Months ago. I don't know how many months ago.

Q Months ago?

A Yes, sir.

Q When you arrived by cab, did you do any work for him?

A Not do work for him. My thrill was in plotting or graphing commodities. I would get a kick out of it, to see if my judgment -- I would discuss it. I wouldn't say he followed my judgment, but I would tell him according to my judgment it looks like -- this looks like a pig or this does. That is all. I felt good doing it.

Q Did you plot the commodities for Mr. Stoller?

MR. GOULD: I object to that, your Honor.

A I didn't say I plotted it for him.

THE COURT: I am going to allow this.

1 gab-2

Arden-cross

2 Are you saying you did or you didn't?

3 A On my own -- in other words, he did not follow
4 my suggestion or anything of the sort. I would go down.
5 I would see, for instance, pork bellies locked cheap. I am
6 going to look back five years on pork bellies just to see
7 how the lines are. Then I would say, "Phil, you know pork
8 bellies look like it is a low for five years." I didn't
9 do it for Phil. I would discuss it with anybody that was
10 in the office.

11 THE COURT: Sir, I didn't mean to put you to
12 all this trouble. What did you mean by "plotting"?

13 THE WITNESS: I would say -- call it a graph,
14 if you will, sir. I am trying to --

15 THE COURT: This was part of your job, right?

16 THE WITNESS: I didn't work for them sir. This
17 is my therapy. I couldn't stay home. In other words --

18 THE COURT: I thought you told us when you appeared
19 here this morning that you worked for something called Stoller-
20 Allen --

21 THE WITNESS: But they were out of business in
22 '68, sir.

23 MR. GOULD: The questions are as to the last few
24 months, your Honor.

25 THE COURT: Just a moment, please. Do you mind?

1 gab-3 Arden-cross

2 Do you want to object to my questions? Object.

3 MR. GOULD: I am not going to object to your
4 questions.

5 A In '69 the publication folded up.

6 THE COURT: You are telling us about something
7 that is going on -- it is very hard to follow you.

8 THE WITNESS: I haven't been on their payroll
9 in '69, '70 and '71. I went on their payroll in '72--

10 THE COURT: Just a moment. I believe when you
11 came in this morning you told this gentleman out there,
12 Mr. Gould, that you worked for these people in '63 or '69.
13 Now you are telling us you didn't work for them in '63 or
14 '69.

15 THE WITNESS: I did work in '63 and part of
16 '69, sir.

17 THE COURT: Fine. Now you tell me that. You said
18 something else just a moment ago. I don't want to argue
19 with you, sir. I just want to clarify this. You are very
20 hard to follow.

21 THE WITNESS: What do you want to clarify, your
22 Honor? I would be glad to clarify.

23 THE COURT: I would like you to tell us: Did
24 you or did you not work for this thing called the Stoller-
25 Allen survey in '69?

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Arden-cross

1 gab-4 Arden-cross
2 A Up to the beginning of '69. It folded up.

3 THE COURT: So you did not work for them in '69?

4 THE WITNESS: That is --

5 THE COURT: You are sure?

6 THE WITNESS: In '69 I am fairly sure that I did
7 not work for them. I am fairly sure it folded up prior to
8 the beginning of '69.

9 THE COURT: This morning when you told Mr. Gould
10 otherwise, you were mistaken, correct?

11 THE WITNESS: He asked me if I worked for them in
12 '68, when the paper was --

13 THE COURT: Sir, never mind. You quite obviously
14 don't. I repeat for the last time,

15 THE WITNESS: Yes, sir.

16 THE COURT: Did you or did you not work for
17 Stoller and Allen in this place on East 60th Street in 1969?

18 THE WITNESS: I do not believe I did.

19 THE COURT: All right. If you said to the contrary,
20 you were mistaken.

21 THE WITNESS: Work and being there -- you see, I
22 am trying to explain --

23 THE COURT: No, I am not trying --

24 THE WITNESS: In other words, I did not work for
25 them on a salary or any paying basis.

gab-5

Arden-cross

1 THE COURT: Sir, that is not my function. I am
2 trying to get some clarification from you. Do you mind
3 just listening to me, please?
4

5 THE WITNESS: Yes, sir.

6 THE COURT: I simply want to know: Did you or
7 did you not work for these men in '59?

8 THE WITNESS: I do not believe I did, sir.

9 THE COURT: All right. You are sure of that?

10 THE WITNESS: Fairly certain.

11 THE COURT: All right.

12 Now, apparently there came a time in 1972 that you
13 did something in relation to these men or one of them.

14 THE WITNESS: That's right, sir.

15 THE COURT: What did you do in 1972?

16 THE WITNESS: Then Mr. Stoller was playing
17 commodities --

18 THE COURT: I just want to know what you did.

19 THE WITNESS: I was -- at that time I was plotting
20 the same -- graphing commodities, the ups and downs.

21 THE COURT: You mean commodity prices?

22 THE WITNESS: That's right.

23 THE COURT: You did this for Mr. Stoller?

24 THE WITNESS: Correct, sir.

25 THE COURT: Where did you do it. East 60th Street?

gab-6

Arden-cross

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2

THE COURT: Where were you?

3

THE WITNESS: We did that on 25 Broad Street.

4

THE COURT: I see. That was in the year '72.

5

THE WITNESS: '72 and '73.

6

THE COURT: And '73?

7

THE WITNESS: '73, too.

8

THE COURT: All right.

9

Now, I understand there came a time in 1973
when your relationship was terminated, is that correct?

11

THE WITNESS: I wouldn't say terminated, sir.

12

My health was such --

13

THE COURT: Mr. --

14

THE WITNESS: I wouldn't say terminated, sir.

15

It was not terminated.

16

THE COURT: Mr. Arden, I am not blaming you or
trying to criticize you. All I am trying to do is to clarify
what I consider a very ambiguous record. Now, listen.

19

Did there come a time in '73 when you stopped
working with or for Mr. Stollar? That is all I want to know.

21

THE WITNESS: No, sir.

22

THE COURT: There didn't?

23

THE WITNESS: No, sir.

24

THE COURT: Are you still working for him today?

25

THE WITNESS: That term working is ambiguous.

gab-7

Arden-cross

THE COURT: You don't understand the question?

THE WITNESS: I understand the question. To me -- if your Honor will please permit me, to me when you say you are working for somebody, you are getting paid for doing something. That to me means working for somebody.

THE COURT: All right, I will accept that. You say you are not working for them?

THE WITNESS: I am not working for them. My therapy, and the doctor even told it to me --

THE COURT: Look, I don't want to get into your relationship with your doctor.

THE WITNESS: In other words, if I stay home I feel worse. I vegetate home. My therapy was to go over there. I am not working for them.

THE COURT: All right. But you go down to some office apparently?

THE WITNESS: I go down when I feel -- I go down there. He will give me -- in other words, I will take a cab there and a cab back. He will pay me my expense.

THE COURT: I see. Where is this?

THE WITNESS: 25 Broad Street.

THE COURT: Still 25 Broad Street.

THE WITNESS: I haven't been there, sir. I was six months in Florida. I hadn't had the opportunity actually

gab-8

Arden-cross.

to really go back since the end of '73.

THE COURT: All right.

At the end of '73 you stopped going down to this office?

THE WITNESS: Correct, sir.

THE COURT: And you haven't been back since?

THE WITNESS: I may have been there a couple of times after I came back.

THE COURT: From Florida?

THE WITNESS: From Florida.

THE COURT: When did you come back from Florida?

THE WITNESS: I came back from Florida the latter part of May of '74.

THE COURT: This year?

THE WITNESS: This year. I left December 1st of '73 and I stayed there approximately six months in Florida.

THE COURT: When were you last on the payroll, so to speak?

THE WITNESS: In '73.

THE COURT: In '73?

THE WITNESS: That is right, the early part of '73.

End 4B 23

Q Mr. Arden, does Mr. Steller still owe you any money for expenses and otherwise for having been on the payroll in '73?

A As of now he does not owe me anything, no.

Q And you maintain two apartments, don't you, one in Florida and one in New York?

A I beg your pardon, I do not. I only maintain a New York apartment, sir.

Q Do you go to Florida during the winter?

A Last winter was the first time I spent the winter in Florida.

Q And you are not going down this year?

MR. GOULD: I object to this. This isn't cross-examination.

THE COURT: I sustain the objection to that question.

Q Did you pay rent for your New York apartment?

A I did.

Q And in your Florida residence?

A I did.

Q Do you know what your rent was in your New York apartment?

MR. GOULD: I object to this unless there is some showing that this man has been bought.

gb-2

Arden-cross

Recross

THE COURT: Since I didn't hear the question, and I am pretty sure it wasn't even finished --

MR. GOULD: Whether he paid rent in his apartment.

THE COURT: Just a moment, Mr. Gould. Will you please speak out, Mr. Sorkin.

MR. SORKIN: My question was, your Honor, did you pay rent in your New York apartment in 1969? And the rest of the question was: And also at the same time in your Florida residence?

MR. GOULD: I object to this.

THE COURT: I don't see any point in this.

MR. SORKIN: Your Honor, I have really no further questions at this time.

THE COURT: Any redirect?

MR. GOULD: No redirect.

MR. FELDSHUB: I have recross, your Honor.

REXCROSS-EXAMINATION

BY MR. FELDSHUB:

MR. FELDSHUB: Will you mark this, please, as a defendant Frank Exhibit for identification.

(Defendant Frank Exhibits O & P marked for identification.

Q Mr. Arden, in 1969 did you live at 31 Ocean Parkway, Brooklyn, New York, 11218?

qb-3

Auden-recross

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A Correct, sir.

Q Did you live there with your wife at that time?

A I did.

Q And that was your home, is that right?

A It still is.

Q I show you, sir, Defendant Frank Exhibit O for identification and I ask you, sir, is that your signature on this paper?

A It is.

Q I show you, sir, Defendant Frank Exhibit P for identification and I ask you, sir, do you recognize that signature?

A That is my wife's signature.

Q That is the signature of your wife, Sarah Striziver?

A That is right.

Q Do you recall in response to Mr. Sorokin's questions that you told him that you saw two sets of documents?

A At the SEC I definitely stated I brought him a set of documents. I was fairly certain that -- then he stated -- we had them signed home. We had them signed home and I brought them back to the office.

Q Referring to Defendant Frank Exhibit O and Defendant Frank Exhibit P for identification, sir, is that

gb-4

Arden-recross

your address on the left-hand side of that exhibit?

A Correct, sir.

Q That is correct, right?

A Right.

Q I ask you, sir, who gave you Defendant Frank Exhibit P and Exhibit O? Who gave these papers to you?

A In 1969?

Q Right.

A I believe it was Jerry Allen.

Q Mr. Allen gave them to you. At the time that he gave them to you did he state in words or substance anything about having them notarized?

A No, sir.

Q I ask you, sir, with respect to your appearance before the Securities and Exchange Commission on or about July 14, 1969, do you remember if these were the documents that were shown to you, now referring to Defendant Frank Exhibits O and P?

A I can't recollect which they were. But I said there must have been some -- there was no notarization --

MR. SORKIN: He says he doesn't recollect.

MR. FELDSHJH: Let him finish his answer.

THE COURT: You may answer the question but just before we go anywhere I want you to listen to the question.

cb-5

Arden-recross

(Question read.)

A I can't recollect whether these were the exact ones. I can't recollect, sir.

Q Sir, looking at these documents, does this refresh your recollection as to whether or not Mr. Allen, upon the occasion that he gave you these documents, referring to Defendant Frank's O and P, asked you to have them notarized?

A He never asked us to have these notarized, no.

Q He just asked you to have them signed, is that correct?

A Correct, sir.

Q And you did sign them?

A Right. I brought them home, as I stated in SEC hearing.

MR. FELDSHUH: I offer them.

MR. SORKIN: May I see them, your Honor.

THE COURT: Yes.

(Pause.)

MR. SORKIN: May I just ask one question on voir dire?

VOIR DIRE EXAMINATION

BY MR. SORKIN:

Q Look at both of these again, Mr. Arden. Look at O and P.

1 A Yes.

2 Q Is it your testimony that it was Mr. Allen
3 who gave you these exact documents, the ones you are holding
4 in your hand now, these documents?

5 A Yes, sir. That is to take home.

6 Q How can you tell that these are the exact documents?
7 Are your initials on them or dates?

8 A My name is on it.

9 Q Do you know if this is a copy?

10 A You mean a photostat? I don't know whether it
11 is a copy or not. I can't tell you if that is the exact
12 one he gave me. How can I tell you?

13 Q You don't know if that is the exact one he gave
14 you?

15 A It looks like the ones I signed. That is all.

16 MR. SORKIN: I object, your Honor. I don't
17 think a proper foundation has been laid.

18 THE COURT: I am inclined to agree at this stage
19 of the record.

20 MR. GOULD: I don't understand the basis of the
21 objection, your Honor.

22 THE COURT: I will tell you the basis of my
23 ruling. These things are hanging in the air, particularly
24 in light of this witness' answers. Do you understand it?
25

gb-7

Arden-recess

MR. GOULD: No, I don't, your Honor.

THE COURT: I think we better take a recess because I don't want to say any more than that at this moment.

Do you want to ask more questions?

MR. FELDENHUB: I would like to ask him after your Honor's ruling.

THE COURT: I said I sustain the objection on the basis of the present record.

BY MR. FELDENHUB:

Q Mr. Arden, when you got the papers, now referring to Defendant's Exhibits O and P, what did you do with them after you signed them?

MR. SORBIN: I object. I don't think that was the basis of the objection. He said he didn't recall getting these particular documents.

THE COURT: Gentlemen, I think you better reflect about what is going on here.

MR. GOULD: May I make an application to the Court, your Honor?

THE COURT: Not now. I would suggest you not do it now but I will be glad to take a recess.

MR. GOULD: I will be glad to do it outside the presence of the jury.

gb-3

Arden-Recess

1 THE COURT: All right.

2 Mr. Witness, I want you to step out in the witness
3 room and I don't want you to say boo to anybody. If they
4 say boo to you, you be polite and tell them not to bother
5 you.
6

7 THE WITNESS: I will tell them I am hard of hearing

8 THE COURT: All right. We will be back in a few
9 minutes.

10 Ladies and gentlemen of the jury, we will take
11 a brief recess.

12 Counsel please remain.

13 (Jury left the courtroom.)

14 THE COURT: Gentlemen, let me put it very succinctly
15 There are three reasons why at least I am not admitting this.
16 First, the witness doesn't know what he is talking about in
17 this, and in my opinion, in many other ways. He can say
18 anything and will. I have seldom seen a witness I have had
19 less confidence with in all my years sitting and listening
20 to witnesses.

21 Second of all, there is nothing to give these
22 papers any credibility on their face. They are nothing but
23 photostats of photostats of photostats. Third of all, there
24 is no hardship to the defense just because they have got this
25 dreadful man on the stand. That doesn't mean that maybe

qb-9

Arden-recross

1
2 somebody else can't help out here and then the documents
3 could be admissible.

4 MR. GOULD: If your Honor please, I understand
5 that this little problem arises because on cross-examination
6 reference is made to papers that were produced at the SEC,
7 and the suggestion is made that the papers produced at the
8 SEC were either the originals of these bills of sales or
9 photostats thereof.

10 THE COURT: Right.

11 MR. GOULD: If indeed the originals were produced
12 at the SEC they should have been marked for identification,
13 although I understand --

14 THE COURT: Wait a minute, Mr. Gould. You
15 don't mean that.

16 MR. GOULD: I do mean it.

17 THE COURT: Mr. Feldshuh wouldn't necessarily
18 have the originals.

19 MR. GOULD: I didn't say he did. I said if the
20 originals were produced in connection with the SEC interroga-
21 tion the originals would have been marked or if photostats
22 were produced the photostats would have been marked. The
23 normal practice is, even in the SEC, to mark papers for
24 identification. Therefore, the SEC file will contain, I
25 anticipate --

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Arden-records

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THE COURT: I didn't start this, Mr. Gould.

MR. GOULD: Neither did I.

THE COURT: Sidney Feldshuh did.

MR. GOULD: I think Sorokin started this by suggesting that the papers that were presented to him at the SEC were the notarized affidavits.

MR. SORKIN: What? I asked him and he said yes. your Honor, he recalls these being the ones.

MR. FELDSHUH: He said there were two sets of papers.

MR. SORKIN: I asked him if this was the one and his testimony was --

MR. GOULD: I think --

MR. SORKIN: Excuse me, Mr. Gould, you brought this up. I asked him if 22 and 21 were shown to him at the SEC and he said yes.

MR. GOULD: He is a dreadful man because he is a defense witness, and, therefore, he deserves to be badgered this way. I suggest to the Court that there is a paper that was marked on the SEC transcript and I would like to see it.

End 5A

1 gqe

Arden - cross

2306

2 THE COURT: That is something else again.

3 MR. GOULD: That is all I have suggested so far.

4 THE COURT: Blaming the Government I think is a
5 little unfair. There is plenty to blame the Government
6 for without --

7 MR. GOULD: Your Honor said we started it and I
8 suggest that it is precipitated by the reference to the SEC
9 transcript. I reiterate, if the papers were produced on the
10 SEC transcript they were marked, and if they are marked they
11 are here. If they are here let's have them.

12 THE COURT: You are lecturing me for something
13 that I am not prepared to accept. First of all, I meant
14 what I said. Mr. Feldshuh offered these, the Government
15 didn't, and that is quite plain from the record. I quite
16 agree with you, if you want to show your expertise in this
17 field I won't quarrel with you.

18 MR. GOULD: It is not a question of demonstra-
19 ting expertise. He was cross examined with respect to two
20 papers and there are obviously four papers and we are per-
21 fectly within our rights in demonstrating that there are
22 four papers, two notarized and two not notarized.

23 MR. SORKIN: Obviously there are not four papers.
24 He says there is but that doesn't mean it is so. If this
25 was not the one he could have said so and I would have stopped

2 there.

3 MR. FELDSHUH: He did say it.

4 THE COURT: The three of you demonstrate beyond
5 a per adventure of doubt that this is the most absurd con-
6 tretemps that I can think about.

7 Let's go back. Mr. Gould, I find myself completely
8 in disagreement with you and I am surprised at having you
9 lecture me in the tone in which you are.

10 In all my years you must realize that I know that
11 the SEC should have documents in the file and I don't take
12 kindly to your remarks on that.

13 As to you, Mr. Sorkin, I don't want any advice
14 from you either and the same goes to you, Mr. Feldshuh. I
15 am sick of hearing all of this because it doesn't amount to
16 anything, except to this extent:

17 One, Sidney Feldshuh offered certain documents
18 which he is entitled to offer. That is not the Government's
19 fault.

20 Two, if you gentlemen want to ask the Government
21 if they have any SEC files or copies of these which were
22 marked before the Commission, I would support you in that.

23 Three, I regard this witness as virtually incom-
24 petent. He will say anything and that is why I am concerned
25 here. He isn't competent to say anything at this point. I

2 don't blame him much on this one particularly because it is
3 so hard to tell by looking at the documents as to what they
4 are.

5 They could have been 100 times photostats. I
6 say this with utmost respect because I have to deal with
7 what I see and I see some lousy photostats. In 1974, you
8 can do anything with photostats or Xerox equipment. I
9 don't know what these are. There is no record to help
10 Mr. Arden. He is a very undisciplined, irresponsible
11 talker. He will say most anything, as a witness he told me.
12 One day he is here and another day he is there, all over
13 the lot. There are people like this. I don't blame him.
14 It is a fact of life. I have no confidence in anything he say

15 That is the third concern that I have.

16 Fourth, I may suggest to you gentlemen that if
17 you want to get anything you don't have to go into a temper
18 tantrum. All you have to do is wait and it will be done.
19 But don't try to do it through a witness who obviously is
20 bordering on incompetency for this particular purpose.

21 MR. GOULD: If your Honor please, whether there
22 were two sets of documents or not, to wit, a set which was
23 first prepared with his home address in the lower lefthand
24 column and then a set which had a conventional notarization
25 formula in the lefthand corner will certainly appear before

1 long. We don't have to harrass this old man in order to do
2 it. As far as I am concerned, I am perfectly willing to
3 subside with respect to the exhibit and we will get another
4 witness out of whose mouth we will demonstrate that there were
5 indeed two sets of documents.
6

7 THE COURT: I am sure of that. Why did we have
8 this interruption then?

9 MR. GOULD: I don't know. Let's do it that way.

10 THE COURT: Mr. Feldshuh, I think really, with
11 all due respect to Messrs. Gould and Sorkin, you are really
12 the one that is concerned and I would like to hear you on
13 this without their constant interruptions which I don't
14 think have helped you or me.

15 What do you want? Do you see the problem?

16 MR. FELDSHUH: Yes, of course, I do. However,
17 I must point out that on cross examination the Government
18 did bring out the fact from this witness who said there
19 were two sets of papers.

20 THE COURT: I don't want to quarrel with that.
21 They did say that.

22 MR. FELDSHUH: A propos of that on re-cross, I am
23 trying to show that in fact there were two sets of papers.

24 THE COURT: I don't quarrel with that but we
25 have a problem. The witness really doesn't know.

1 MR. FELDSHUN: He said he recognized them here.
2
3 Be these photostats or anything else, he identified these
4 signatures. To that extent he also identified his home
5 address.

6 THE COURT: And I am ruling them out because I
7 don't trust the witness' testimony in this regard and,
8 second of all, these photostats are so obviously repeat
9 photostats of some kind that I don't know what they mean.

10 MR. FELDSHUN: Your Honor, that may well be.
11 I might add to that if your Honor considers the Government's
12 exhibits, they too are repeat photostats.

13 THE COURT: I know that.

14 MR. FELDSHUN: And I might say also, your Honor,
15 as far as I am concerned, I was endeavoring to show what
16 happened to the originals of these.

17 THE COURT: I don't blame you at all. I am sorry,
18 but I don't accept anything this witness says on this sub-
19 ject with any confidence at all. He will say anything.

20 MR. FELDSHUN: One thing is for sure, no matter
21 what else is said, he looks at a paper that appears to have
22 signatures on it --

23 THE COURT: What does it prove?

24 MR. FELDSHUN: It is a piece of paper that
25 appears to be a copy of the signature of his wife and of him-
self.

1 THE COURT: No doubt about it.

2 MR. FELDSHUH: To that extent there is no ques-
3 tion about the admissibility.

4 THE COURT: That doesn't make it admissible here.

5 MR. FELDSHUH: Your Honor, I recognize the ques-
6 tion as to what happened to the original and so on and so
7 forth. We have long since gone into this trial without
8 having originals.

9 THE COURT: Here is the problem:

10 We also have in the record the notarized ones.
11 In one breath he claims that he recalls going to Mr. Frank's
12 office and seeing Mr. Frank and so on, and in the other
13 breath he says something different. That is fine. That is
14 understandable too.

15 All of a sudden, out of the blue, comes another
16 set.

17 MR. FELDSHUH: I want to show that in fact there
18 were two sets. And that the set --

19 THE COURT: He doesn't know any more about this
20 than I do.

21 MR. FELDSHUH: Sir, if we merely show there were
22 two sets and the testimony of the SEC standing alone, we can
23 go to the jury on the question as to whether this was the
24 set that was before this witness at the SEC hearing.

1 THE COURT: Look, Mr. Sorkin, I do not trust any
2 of this to this witness and I am appalled that you
3 apparently see the point.
4

5 MR. SORKIN: I do, your Honor.

6 THE COURT: Do you have from the SEC what they
7 showed this witness? This man is very difficult to deal
8 with. He doesn't know what he is talking about from one
9 minute to the next. He tells Mr. Gould one thing and he
10 tells me another. He doesn't know yet what the truth is.

11 MR. SORKIN: With all respect, I know that better
12 than the Court. I had this man at the grand jury and at
13 the SEC --

14 THE COURT: I am sure you do and so I press the
15 question. We have wasted 20 minutes. Does the SEC have
16 something that looks like something marked before them and
17 shown to this unfortunate witness?

18 MR. SORKIN: I will go down and look, your Honor.

19 MR. GOULD: This isn't right.

20 THE COURT: Mr. Gould, wait a minute --

21 MR. GOULD: With good reason, your Honor. I was
22 offered a stipulation that the aggregate amount paid to this
23 man D'Onofrio was \$15,000.

24 MR. SORKIN: That is what we knew. We didn't
25 have these receipts.

1 jge 8

Arden - cross

2 MR. GOULD: I don't believe you.

3 MR. SORKIN: I don't care if you believe me or
4 not.

5 MR. GOULD: It is on the record that I don't
6 believe you, on this and on other things.

7 THE COURT: Now, the truth is out.

8 MR. GOULD: I don't like to be lied to.

9 MR. SORKIN: No one is lying.

10 MR. GOULD: We are offered a stipulation for
11 half the amount.

12 MR. SORKIN: As I said before, Brodsky we didn't
13 have. We never had Brodsky's. I showed him mine and one
14 from Velie. He has Brodsky's there and I told him I didn't
15 know --

16 MR. GOULD: Where have they been, in a safe some-
17 where for the last three weeks?

18 MR. SORKIN: I don't have them.

19 MR. GOULD: I don't care what his wife said.
20 Bring her in if you want to.

21 MR. SORKIN: We have been through that in the
22 grand jury.

23 THE COURT: Are you two through?

24 MR. GOULD: I am. I am sorry.

25 MR. SORKIN: I am sorry.

1 THE COURT: You should be sorry for yourselves.
2 It is too bad this is all being recorded, but it is. Let's
3 get back to the matter at hand.
4

5 I sympathize with what Mr. Feldshuh wants to do.
6 I understand that. My concern is I have no confidence in
7 the reliability of what the witness has said on this matter
8 and I must say in fairness to Mr. Arden that on this one I
9 can't blame him. Those photostats are practically illegible.
10 Mr. Sorkin, I insist that the United States Attorney's
11 Office has to help us.

12 I would like to know before this witness is
13 excused what we have that shows some tracks of this being
14 marked when they asked him whatever questions they asked
15 him before the Commission.

16 MR. SORKIN: Yes, your Honor.

17 THE COURT: Then I think those should be shown
18 to Mr. Feldshuh in the first instance, and, of course, to
19 Mr. Gould, too.

20 I would suggest that we come on with some
21 other witness and not badger this little man now. He is
22 not very good even when he isn't being badgered. Is that
23 all right with you, Mr. Gould?

24 MR. GOULD: Yes, sir.

25 THE COURT: Do you have another witness?

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Arden - cross

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MR. GOULD: Yes, sir.

THE COURT: The last thing I suggest to all of you, and I mean this -- if it happens again I will deal with it the hard way -- if you have your differences one way or the other and if you insist that you want some understanding of the Judge's ruling and if it is this important, rather than go into a temper snit in front of the fact finders, I would suggest you simply do what I invited you to do twenty minutes ago.

We will take a recess. It is bad enough without the jury but I don't want any of this to come out before the jury. I am ashamed of our profession as it is. Let's not make it any worse.

All right, we will take five minutes.

(Recess.)

2 (In open court. Jury absent.)

3 THE COURT: Mr. Gould, could you bring your
4 witness in here please, so I can explain to him what we
5 are up to or have him brought in by one of these esteemable
6 sidekicks of yours.

7 MR. GOULD: I will get him, your Honor.

8 (Pause.)

9 THE COURT: Mr. Arden, would you mind waiting a
10 bit in the witness room. The Government is trying to get some
11 better copies of those papers these gentlemen have been
12 showing you and I'm afraid that the present copies are a
13 little confusing to you and all the rest of us or at least
14 it is possible they are. Would you mind just waiting a bit
15 and we will recall you as soon as we find out.

16 THE WITNESS: Your Honor, I would like to sug-
17 gest it be done. I would be glad to wait all day if
18 necessary.

19 THE COURT: I hope it won't be that. Thank you
20 very much. We will let you know.

21 (Mr. Arden leaves the courtroom.)

22 THE COURT: Mr. Gould, is it true you have another
23 witness available?

24 MR. GOULD: Yes, sir.

25 THE COURT: What is that gentleman's name?

1 gawe

2317

2 MR. GOULD: Hiller.

3 THE COURT: All right.

4 Bring in the jury and Mr. Hiller.

5 (Jury present.)

6 MR. SORKIN: Your Honor, I have a document --

7 THE COURT: Fine. If you could just give it to
8 Mr. Feldshuh in the first instance. He deserves it first.

9 MR. SORKIN: Fine, your Honor.

10 THE COURT: All right, gentlemen. Would you
11 please sit down so we can have the witness sworn.

xx 12 M E L V Y N H I L L E R, called as a witness by the
13 defense, having been first duly sworn by the Clerk of
14 the Court, testified as follows:

xx 15 DIRECT EXAMINATION

16 BY MR. GOULD:

17 THE COURT: Forgive me, Mr. Gould. Before you
18 begin, I want to explain to the jury that in their absence
19 I asked the witness, Arden, to wait a bit, until we could
20 have Mr. Sorkin and his associates look for some better
21 copies of those two photostats which I believe were marked
22 by Mr. Feldshuh as Exhibits Frank O and P for identification.

23 MR. FELDSHUH: That's correct, your Honor.

24 THE COURT: Mr. Sorkin has obliged us I think, on
25 that.

1 gawe

Hiller

2318

2 MR. SORKIN: I have obliged to the extent I
3 found the other document, your Honor, which had a SEC
4 exhibit on it.

5 THE COURT: Whatever. As soon as we can get to the
6 bottom of that problem, we will probably have Mr. Arden
7 recalled. In the meantime Mr. Gould has agreed to go
8 forward with this witness so we won't lose any more time.

9 (Pause.)

10 THE COURT: The problem is Mr. Hiller would like
11 to wear his dark glasses because of a recent operation. I
12 assume that you, Mr. Gould, will not object?

13 MR. SORKIN: No objection.

14 THE COURT: I assume the jury and all counsel will
15 not object. You go right ahead.

xx

16 DIRECT EXAMINATION

17 BY MR. GOULD:

18 Q Mr. Hiller, do you know Mr. Raymond D'Onofrio?

19 A Yes, I do.

20 Q Did there come a time in the last year or so when
21 you had a conversation with Mr. D'Onofrio?

22 A Yes, I did.

23 Q Would you tell his Honor and the jury when and
24 where that conversation took place?

25 MR. SORKIN: Your Honor, I object. I think this

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Hiller - direct

2320

Q What was the conversation that you had?

MR. SORKIN: Now I must press my objection on that particular conversation, your Honor.

THE COURT: If you would like, we will ask that counsel make an offer of proof at the side bar.

MR. SORKIN: Yes, I do, your Honor.

THE COURT: All right.

(At the side bar.)

MR. GOULD: Your Honor, I offer to prove through this witness that the conversation after an exchange of what he describes as amenities then went along as follows:

That he asked D'Onofrio what he was doing here in the courthouse, that D'Onofrio then told him that he was here to deliver bodies, the body of faceless people, that that was his job, that was his business, that he was working for the Government, that he was getting paid two to \$400 a week by the Government plus his traveling expenses, that he lived in Las Vegas, that he traveled to New York and back at the Government's expense about once every week, and that he said to him, it is no problem of yours, but some of your very good friends are on a grease rail to nowhere, that he had an arrangement with the Government --

THE COURT: All right.

MR. GOULD: That's it.

1 gawe

Hiller - direct

2321

2 THE COURT: Would you mind telling me who is
3 this worthy citizen?

4 MR. GOULD: A man that spent his life in the
5 brokerage business and as far as I know --

6 THE COURT: He's a broker?

7 MR. GOULD: He's a broker, also a defense witness.

8 THE COURT: Of course he's that. I wanted to know
9 what his background was.

10 MR. GOULD: He's been a broker. I think he's
11 a man on the point of disillusion from cancer.

12 THE COURT: No, no. I just wanted to know what
13 business he was in.

14 MR. GOULD: I will ask him.

15 THE COURT: I think we ought to.

16 MR. GOULD: Sure.

17 THE COURT: You object to this?

18 MR. SORKIN: My problem is this, your Honor: I
19 think it is collateral because now this leaves the door open
20 for the Government to call Harvey Segal.

21 MR. GOULD: Fine.

22 THE COURT: That's all right. That's not the test
23 of admissibility.

24 MR. SORKIN: Then for that reason, your Honor, I
25 think it is collateral. We are getting off into another

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Hiller - direct 2322

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issue here.

THE COURT: No, no. We are not getting off into another issue because Mr D'Onofrio was asked about things of this nature when he was here. As far as you wanting to bring in somebody else, that's another problem.

MR. GOULD: Certainly.

THE COURT: If these gentlemen want to go into it, they are entitled to.

MR. GOULD: This is a two minute conversation.

MR. SORKIN: I will withdraw my objection then.

THE COURT: Just a moment. I do insist now just for the simple point of orderly procedure, we get some idea who this great man is. All he is now is a man. We don't have him identified.

MR. GOULD: Usually when I omit that Mr. Sorkin can be relied on.

THE COURT: I'm not asking Mr. Sorkin, I'm asking you.

MR. GOULD: Certainly.

(In open court.)

MR. SORKIN: Your Honor, based upon the side bar comment, I withdraw my objection.

BY MR. GOULD:

Q Mr. Hiller, how old are you, sir?

1 gawe

Miller - direct

2323

2 A I'm 51.

3 Q Where are you presently employed?

4 A At Comet Lithographers.

5 Q What business were you in before you worked
6 for Comet Lithographers?

7 A I was in the brokerage business.

8 Q How long were you in the brokerage business?

9 A Approximately 23 years.

10 Q Come back to your meeting with Mr. D'Onofrio.
11 Would you refresh my recollection as to when you say it
12 took place?

13 A In the fall of 1973.

14 Q And this is outside the courthouse here?

15 A Yes.

16 Q This courthouse?

17 A Yes.

18 Q What did you say to Mr. D'Onofrio and what did
19 he say to you?

20 A Well, we exchanged greetings and other amenities.
21 Then I asked Mr. D'Onofrio what brought him to the steps of
22 the courthouse.

23 Q Keep your voice up a little, Mr. Miller, so these
24 jurors back here can hear you.

25 A Okay. I asked him what brought him to the court-

1 gawe

Hiller - cross

2325

2 about four questions.

3 MR. SORKIN: I will rephrase the question.

4 MR. GOULD: Excellent summation.

5 MR. SORKIN: I will rephrase it. Thank you,
6 Mr. Gould.

7 Q Are you now a co-plaintiff in a lawsuit against
8 Franklin Mint formerly General Numismatics?

9 MR. GOULD: I object to that, if your Honor please.

10 Q Co-plaintiff with Mr. Stoller?

11 MR. GOULD: He can answer that, yes or no,
12 without the rest of it.

13 MR. SORKIN: I'm asking for a yes or no at this
14 time.

15 MR. GOULD: The question has other things in it,
16 your Honor.

17 THE COURT: It isn't a very good question, Mr.
18 Sorkin.

19 Start again. Don't get excited.

20 Q Mr. Hiller, are you presently, along with Mr.
21 Stoller, suing a company called Franklin Mint for certain
22 warrents or options and a finders fee?

23 MR. GOULD: That's what I object to, your Honor.

24 THE COURT: First of all, are you a co-plaintiff
25 with Mr. Stoller in some kind of a lawsuit?

A No, I am not, your Honor.

1 gawe Hiller - cross 2326

2 THE COURT: You are not.

3 All right. Next question.

4 Q Were you within the last year, in a suit filed
5 in Philadelphia, Pennsylvania?

6 A I don't believe so.

7 Q Let me see if I can refresh your recollection a
8 little more.

9 Were you and Mr. Stoller finders for Franklin
10 Mint back in the late sixties?

11 A I really don't understand the question, your
12 Honor.

13 MR. SORKIN: May we have this marked Government's
14 Exhibit 111 for identification.

15 MR. GOULD: Your Honor, I object to the question.
16 Suppose they were, what's it got to do with this --

17 THE COURT: He doesn't understand the question,
18 so he's effectively ended that one for the moment. So there's
19 no question against which you need pose an objection.

20 Mr. Sorkin wants to mark something here. He's
21 entitled to that.

xx 22 (Government's Exhibit 111 marked for identifica-
23 tion.)

24 Q Is it your testimony now, Mr. Hiller, and
25 let me go back a year prior to that -- let me go as far back

1 gawe

Hiller - cross

2327

2 as I can.

3 Were you ever a plaintiff in a lawsuit with
4 Mr. Stoller as your co-plaintiff against the company called
5 Franklin Mint?

6 MR. GOULD: I object to this as being improper
7 cross examination.

8 THE COURT: I am going to sustain the objection,
9 one of form at this point. I think it is totally unnecessary
10 from your viewpoint, Mr. Sorkin.

11 Q Mr. Hiller --

12 THE COURT: One thing at a time. You just
13 marked a document.

14 MR. SORKIN: I would like to go a little bit more
15 to see if I can refresh his recollection first.

16 MR. GOULD: He doesn't need it.

17 THE COURT: At the present time I must agree.
18 That's why I suggested, if you have some problem with this
19 document, let's get to the document.

20 Q Mr. Hiller, to your knowledge, was a civil action
21 filed in the United States District Court for the Eastern
22 District of Pennsylvania naming you and Mr. Stoller as
23 plaintiffs against the Franklin Mint, Inc. and one Joseph
24 Segal.

25 MR. GOULD: If your Honor please, I object to the

1 gawe Hiller - cross 2328
2 question. If the thrust of the inquiry is whether he knows
3 Stoller, had business relations with him in the past, we
4 can deal with that. I object to any inquiry as to collateral
5 matters which don't go to credibility.

6 MR. SORKIN: I disagree. May I be heard on that
7 at side bar?

8 THE COURT: No, I don't want to hear either one of
9 you any further. The objection has been made. I will allow
10 this question.

11 MR. SORKIN: Would the reporter please read back
12 the question.

13 I will ask the question again.

14 Q Were you a plaintiff in a civil action, co-plain-
15 tiff with Mr. Stoller in a civil action filed in the United
16 States District Court for the Eastern District of Pennsylvania
17 suing as defendant the Franklin Mint, Inc. and one Joseph
18 Segal?

19 A Yes.

20 Q When was that?

21 A That suit, I believe, was filed about three years
22 ago.

23 Q Three years ago?

24 A Don't hold me to time. It was considerably some
25 time back.

1 gawe

Hiller - cross

2329

2 Q What were you suing Franklin Mint and Segal for?

3 MR. GOULD: I object to that, if your Honor
4 please.

5 THE COURT: May I suggest, Mr. Sorkin, that Mr.
6 Gould does have one point which I agree with him on here,
7 if you want to ask this man about any relations with Mr.
8 Stoller, you certainly may. We seem to be going around
9 Dick's barn, Harry's barn and a few other barns here.

10 Q How long do you know Mr. Stoller?

11 A Approximately 15 years.

12 Q How did you meet him?

13 MR. GOULD: I object to this.

14 THE COURT: I would sustain that, but I will
15 permit counsel for the Government to go into whatever their
16 relationship has been.

17 Q Did you meet Mr. Stoller in the brokerage business?

18 A Yes.

19 Q Where were you working at the time?

20 A I don't recall.

21 Q Do you know where Mr. Stoller was working at the
22 time?

23 A No, I don't.

24 Q Do you know Jerome Allen?

25 A Yes, I do.

1 gawe

Hiller - cross

2331

2 THE COURT: Sustained.

3 Q Have you ever heard that company?

4 THE COURT: Sustained.

5 Q You have heard of the Franklin Mint Company,
6 haven't you?

7 A Yes.

8 Q When did you first hear that?

9 MR. GOULD: I object to this. This has nothing
10 to do with this case.

11 THE COURT: Yes.

12 MR. SORKIN: I ask the Court to please allow me
13 to press this issue with respect to the civil action and
14 Franklin Mint.

15 MR. GOULD: If he does, your Honor --

16 THE COURT: Just a minute, please. There is a
17 way for suitable inquiries here, but the way you are doing
18 it I'm going to have to sustain the objecting counsel.

19 He's correct.

20 Otherwise we will get into trying another lawsuit
21 which is the last thing we are going to do, Mr. Sorkin, I
22 can assure you.

23 Q Mr. Hiller, do you have any final arrangement with
24 Mr. Stoller on your lawsuit against Franklin Mint should you
25 prevail?

1 gawe

Miller - cross

2332

2 MR. GOULD: I object to that. If he wants to
3 ask this witness whether he has any financial arrangement
4 with Stoller, I have no objection.

5 THE COURT: I tried to make this point to you,
6 Mr. Sorkin. You have a great deal of freedom if you just
7 don't tie it to this lawsuit, which from your own point of
8 view is self-defeating.

9 Q Mr. Hiller, do you have any kind of financial
10 arrangement with Mr. Stoller?

11 A No, I don't.

12 Q Did you ever assign your interests in the recovery
13 of any monies attained in the lawsuit we just mentioned?

14 A No, I do not.

15 Q Have you ever had any business relationship with
16 Mr. Stoller?

17 A Yes, I did.

18 Q In what connection?

19 A You are taking me back now a number of years.

20 Q Let's go back.

21 A How far back do you want to go? Perhaps he had
22 an interest in a stock that I underwrote.

23 Q What was that stock?

24 A Ainsbrook Corporation.

25 Q Where were you at the time you underwrote the

1 gawe

Hiller - cross

2333

2 stock?

3 MR. GOULD: I object to this, your Honor.

4 THE COURT: Why do you ask that, Mr. Sorkin?

5 It is unnecessary. Sustained.

6 Q Mr. Hiller, were you ever employed by a firm called
7 Hancock Securities?

8 A Yes.

9 Q When was that, sir?

10 A I believe 1967 and the first part of '68.

11 Q '67 through part of '68?

12 A Yes.

13 Q And Mr. Morty Tover was your boss then or your
14 superior there, is that correct?

15 MR. GOULD: I object. I think this is inquisitori-
16 al. I don't think this is cross examination.

17 THE COURT: I don't know what Mr. Marty whatever
18 his name is, has to do with this. Mr. Sorkin, your viewpoint
19 just baffles me. You don't have to ask these questions and
20 important questions you seem to overlook.

21 Q Did you meet Mr. Stoller and Mr. Allen at Hancock
22 Securities --

23 MR. GOULD: I object to it.

24 THE COURT: I will allow that.

25 Q Did you meet Mr. Stoller and Mr. Allen at Hancock

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25 MR. GOULD: Your Honor, I think this is very

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Miller - cross

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improper.

THE COURT: From the point of view of tactics
you may be right, but basically I think the real point is,
you have already answered that you worked the normal business
day at Hancock when you were there, isn't that right?

THE WITNESS: I said that, your Honor, yes.

THE COURT: All right.

Let's go on.

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Q When did you first tell Mr. Gould what Mr. D'Onofrio said to you on the steps back in the fall of '73?

A Perhaps a few weeks ago.

Q Perhaps a few weeks ago. So between the fall of '73 and a few weeks ago you never told anybody about this, is that so?

A That is not true.

MR. GOULD: That is not right, your Honor. He asked him when he told me.

THE COURT: Sustained as to form.

Q Did you tell anybody, Mr. Hiller?

A Yes.

Q Who did you tell?

A I told Mr. Stoller.

Q Anyone else?

A Not that I can recall.

Q You told Mr. Stoller. Did you tell anyone in the U.S. Attorney's office what Mr. D'Onofrio told you?

A No, I did not.

Q Did you tell an attorney?

A No, I did not.

Q Did you tell Mr. Stoller's attorney other than Mr. Gould, any attorney of Mr. Stoller?

A Yes.

1 gab-2

Hiller-cross

2 Q Who?

3 A Mr. Alenstein.

4 Q Other than Mr. Alenstein, Mr. Gould and Mr.
5 Grimes?

6 A No.

7 Q Mr. Hiller, how long were you standing on the steps
8 of the courthouse?

9 A Perhaps ten minutes.

10 Q And Mr. Segal was there?

11 A No, he left.

12 Q He left before Mr. D'Onofrio said this to you?

13 A He was -- he had a frankfurter or something. He
14 sort of just was not involved in the conversation.

15 Q He didn't hear the conversation?

16 A Not that I can recall.

17 Q How far away was he?

18 A Five feet.

19 Q After Mr. D'Onofrio told you this, did you talk
20 to Mr. Stoller?

21 A Yes.

22 Q How soon after?

23 A Maybe two or three days.

24 Q Have you ever been named in any SEC proceeding,
25 Mr. Hiller?

1 gab-3

Hiller-cross

2 MR. GOULD: I object to this, your Honor.

3 THE COURT: Yes, sustained.

4 Q Mr. Hiller, have you been named as a defendant
5 in SEC injunctive action charging you --

6 MR. GOULD: If your Honor please, that is ex-
7 tremely improper in view of your Honor's ruling on the pre-
8 vious question. For counsel to do that is prejudicial and
9 is flaunting the direction of the Court.

10 We know what the rule is on this. He knows it
11 as well as I do.

12 MR. SORKIN: I don't see how Mr. Gould can say
13 that. The same questions were put to Schneiderman and to
14 every other Government witness virtually.

15 MR. GOULD: Without objection.

16 MR. SORKIN: That is not true, Mr. Gould. It
17 went to his credibility.

18 MR. GOULD: It doesn't go to a man's credibility
19 that he was named in a SEC proceeding --

20 MR. SORKIN: I press the question .

21 MR. GOULD: -- if he was.

22 THE COURT: As posed I am going to sustain the
23 objection. People can be named in a SEC proceeding in various
24 ways. I don't see that this really is a particularly good
25 question on its face, even from your viewpoint.

gab-4

Hiller-cross

Q Were you ever suspended --

MR. GOULD: I ask the Court to admonish counsel as to the form of the question and instruct the jury to disregard it.

THE COURT: I am going to ask the jury to disregard that question and I am going to suggest to you, Mr. Sorkin, if you wish to press this, you are going to have to advise me about it at the side bar.

MR. SORKIN: I will withdraw the question, your Honor. I have no more questions.

THE COURT: Then I will emphatically instruct the jury to disregard this last contretemps between the Court, Mr. Gould and Mr. Sorkin and disregard the question of Mr. Sorkin most particularly.

MR. GOULD: I have nothing further.

THE COURT: Thank you, Mr. Hiller. You may be excused.

(Witness excused.)

THE COURT: Before we call another witness, Mr. Feldshuh, have you had a chance to look at those papers that Mr. Sorkin produced?

MR. FELDSHUH: Yes, your Honor. I have had a chance to look at the papers.

THE COURT: I will be guided by your preference

1 gab-5

Arden-cross

2 then. Would you like to have Mr. Arden recalled?

3 MR. GOULD: Can I make a suggestion to counsel,
4 your Honor? Maybe we will save a little time.

5 (Pause.)

6 MR. FELDSHUH: Your Honor, I will at this time
7 withdraw the proffer and will hold it to some other time.

8 I have no further need for Mr. Arden.

9 THE COURT: You don't want to ask Mr. Arden any-
10 thing else?

11 MR. FELDSHUH: That is right.

12 MR. SORKIN: I do, your Honor.

13 THE COURT: How about you?

14 MR. GOULD: I am finished with him. I don't
15 know what Mr. Sorkin can do with him.

16 THE COURT: I don't either. I will permit him
17 to be recalled.

18 J O S E P H A R D E N resumed.

19 THE COURT: All right.

20 MR. SORKIN: May I have this marked, your Honor,
21 as Government Exhibit 112, please?

22 MR. GOULD: May I inquire whether this is
23 recross?

24 THE COURT: I would assume so. There was recross
25 by Mr. Feldshuh and now there is going to be recross by

1 gab-6

Arden-recross

2 Mr. Sorkin.

xxx 3 (Government Exhibit 112 was marked for
4 identification.)

5 RE CROSS-EXAMINATION

6 BY MR. SORKIN:

7 Q Mr. Arden, let me show you Exhibit 112 and I ask
8 you if that is your signature, sir?

9 A It is.

10 Q It is your signature?

11 A It is, yes, sir.

12 Q Do you recall where you signed this or the orig-
13 inal of this document?

14 MR. FELDSHUH: The original.

15 MR. SORKIN: Yes.

16 A This was signed in Mr. Marty Frank's office.

17 Q That was signed in Mr. Marty Frank's office?

18 A Correct, sir. The original, whatever paper similar
19 to that.

20 Q Similar to this. Let me see if I understand you,
21 Mr. Arden. Was this the document signed in Mr. Frank's
22 office, the original of this, or a document similar to this?

23 A The original.

24 Q The original of that was signed in Mr. Frank's
25 office.

1 gab-7

Arden-recross

2 A Correct.

3 Q Is this the document you were shown at the
4 SEC? Why don't you take a look at it again.

5 A I can't recollect whether it was this one or the
6 other one, sir.

7 Q Which one, sir, this one?

8 A Right, sir. I cannot recollect.

9 Q I can't hear you.

10 A I cannot recollect which one.

11 Q You don't remember which one was shown to you
12 by the SEC, is that correct?

13 A Correct, sir.

14 Q Why don't you just look at this notation down
15 here. Don't read it out loud, and see if that refreshes your
16 recollection.

17 MR. FELDSHUH: Objection. The witness has already
18 answered.

19 THE COURT: Of course he has. That is no reason
20 why he can't be shown something to look at in particular.

21 A I do not understand what this means, your Honor.

22 THE COURT: Fine. Have you read it?

23 THE WITNESS: It says --

24 THE COURT: No, to yourself.

25 A I remember it. I cannot recollect --

1 gab-8 Arden-recross 2343
2 THE COURT: It doesn't do anything to help you
3 refresh your recollection?

4 THE WITNESS: I cannot recollect this part, sir.

5 THE COURT: All right.

6 Q That doesn't help you refresh your recollection?

7 A No.

8 Q Why don't you look at Exhibit 110, Mr. Arden, and
9 Exhibit 112 and see if that refreshes your recollection, sir.

10 A I still can't recollect this latter part of
11 it, sir.

12 Q Very well.

13 MR. SORKIN: I have no further questions, your
14 Honor.

15 THE COURT: Do you have anything, Mr. Feldshuh?

16 MR. FELDSHUH: I have no further questions.

17 THE COURT: Mr. Gould?

18 MR. GOULD: No, sir.

19 THE COURT: All right. Mr. Arden, you may be
20 excused, sir.

21 (Witness excused.)

22 MR. GOULD: We are going to call Mr. Rich, Bruce
23 Rich.

24 MR. SORKIN: Your Honor, may I understand whose
25 witness this is, Mr. Stoller's or Mr. Frank's?

gab-9

Rich-direct

MR. GOULD: Mr. Frank's witness. I was simply told he is a man who is anxious to get away quickly and would we yield to get him out. Do you understand me?

BRUCE A. RICH, called as a witness by Defendant Frank, having been first duly sworn, was examined and testified as follows:

THE COURT: Who is going to examine this witness?

MR. GOULD: It is Mr. Feldshuh's witness, not mine.

THE COURT: Fine, I just want to know, that's all.

DIRECT EXAMINATION

BY MR. FELDSHUH:

Q Mr. Rich, how long have you been employed by the Securities and Exchange Commission?

A I am not presently employed by the Securities and Exchange Commission.

Q I understand you are not presently employed. How long were you employed?

A Approximately four years.

Q During such employment period to which branches have you been assigned?

A I was initially in the Division of Trading and Markets and then I went into the Division of Corporate Finance where I was in charge of the Regulation A section in the

1 gab-10

Rich-direct

2 New York regional office.

3 Q Were you chief of any one of those sections?

4 A Yes. I was chief of the Regulation A section.

5 Q And with regard to your being chief of the
6 Regulation A section, what were your duties, sir?

7 A My duties was to supervise the members of --

8 MR. SORKIN: I object. We went over this on
9 the Government's direct case. If he is being called for
10 another reason, let's get to it.

11 THE COURT: I would quite agree, Mr. Feldshuh.
12 We have all been introduced to Mr. Rich before. We are just
13 wasting time.

14 MR. FELDSHUH: I have been waiting for some kind
15 of concession from the Government.

16 Q I show you this paper, Mr. Rich, and I ask you,
17 sir, referring to Defendant Frank Exhibit N, can you tell his
18 Honor and the jury what this is?

19 A This is a transcript of questions asked by the
20 Commission staff of Mr. Moss in connection with Training
21 With the Pros.

22 Q Were you in attendance at the time this transcript
23 was taken?

24 A Yes.

25 Q Who else was present?

1 gab-11 Rich-direct 2346
2 A According to the cover page, Kenneth Spierer and Al
3 Rashes, attorneys on the staff, and James Todd and Joseph
4 Kelly --

5 MR. SORKIN: We will concede, your Honor, that
6 this is accurately transcribed of Mr. Moss' testimony at the
7 SEC on May 27, 1969.

8 MR. FELDSHUH: I will offer it then, your Honor.

9 MR. SORKIN: Objection.

10 MR. GOULD: One thing. Will the Government also
11 concede prior to the offer that Mr. Moss is dead?

12 MR. SORKIN: Oh, yes, I will concede he is
13 deceased. I thought that was brought out previously through
14 Miss Herzfeld's testimony.

15 MR. GOULD: I wasn't sure. Anyway he is dead.

16 MR. FELDSHUH: I will offer it, sir.

17 MR. SORKIN: Your Honor --

18 THE COURT: The whole thing?

19 MR. FELDSHUH: The whole thing. I will only
20 read certain portions of it.

21 THE COURT: I think we are entitled to know.
22 Are you really offering the whole thing or only part of it?

23 MR. FELDSHUH: I am going to offer the whole
24 thing but I will confine myself to certain questions and
25 answers that are contained in this exhibit. I have marked

1 gab-12

Rich-direct

2 them out. I will do it expeditiously.

3 THE COURT: You want to offer the whole thing,
4 all right.

5 Your position?

6 MR. SORKIN: Your Honor, we object. We have
7 been through this before I think. We stand on our objection.

8 THE COURT: What is your position, Mr. Gould,
9 if any?

10 MR. GOULD: I think that when we --in the presence
11 of a witness who has recently died and we are dealing with
12 facts which occurred in 1968 and '69 and there is the
13 recorded testimony of one of the principal actors, I think
14 that justice requires that we hear what the man said.

15 THE COURT: You are in favor of it?

16 MR. GOULD: Yes.

17 THE COURT: You don't object to it?

18 MR. GOULD: I thought you wanted me to argue it.
19 I urge the Court to admit.

20 THE COURT: All right. I just wanted to make sure.
21 I am going to sustain the objection, Mr. Feldshuh.

22 Q Mr. Rich, was it the business of the Securities
23 and Exchange Commission to have witnesses come before it
24 and to give testimony under oath and was that the regular
25 course of business of the SEC?

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Rich-direct

MR. SORKIN: Objection as to form, your Honor.

THE COURT: Just a moment, Mr. Feldshuh. I am going to sustain the objection. I don't think there is any doubt about that. That is not the reason I am sustaining the objection. It has been conceded it is a transcript taken by the Commission, as you put it, in the regular course of their business. Nobody denies that.

That is not the basis of this Court's ruling.

MR. FELDSHUH: Your Honor, that being the case, I will go through question and answer with this witness --

THE COURT: Questions and answers about what?

MR. FELDSHUH: With respect to what was contained in this transcript and ask him whether it refreshes his recollection.

THE COURT: You are wasting your breath because that is not what is involved here. If that is all there was to it, I would have admitted the transcript. It is not the point at all. Don't bother with Mr. Rich on that score either.

Q Mr. Rich, did you conduct that investigation of Mr. Moss in May of 1969?

MR. SORKIN: Your Honor, we concede that Mr. Rich was present and he may have asked some questions along with several other SEC personnel. Conceded.

Q In connection with that, with your asking questions

1 of Mr. Moss, was Mr. Moss sworn before he answered those
2 questions?
3

4 THE COURT: This is conceded to, Mr. Feldshuh.

5 MR. FELDSHUH: All right, your Honor.

6 THE COURT: No doubt about it. Did you hear
7 what I said, Mr. Feldshuh? There is no issue. He was
8 sworn. We know that.

9 MR. FELDSHUH: Yes, I know that, sir. I have
10 gone into another question.

11 I am sorry if I dropped my voice, your Honor.

12 Q Mr. Rich, prior to May 27, 1969, did you have
13 occasion to speak with Mr. Moss or anyone else from his
14 office with regard to the Regulation A offering of Training
15 With the Pros?

16 A Yes.

17 Q Sir, do you recall when that took place?

18 MR. SORKIN: Your Honor, I object. We conceded
19 a due diligence meeting was had. This was conceded a long
20 time ago.

21 THE COURT: That is right. It has been in the
22 record. We know about that. Other witnesses have told us
23 about that, Mr. Feldshuh.

24 Q In connection with that due diligence meeting, sir,
25 was it the regular course of your business to make a memorandum

1 gab-15 Rich-direct

2 of what transpired at that meeting?

3 A Yes.

4 Q Did you, sir?

5 A We would keep notes of what transpired.

6 Q Would those notes form a regular part of the
7 SEC file?

8 A Usually they did.

9 Q Sir, in connection with that due diligence meeting,
10 do you recall whether you had a discussion with Mr. Moss
11 with respect to the number of shares that might be used on
12 any particular individual or individuals?

13 A That would be a subject that would usually come up
14 in a due diligence meeting.

15 Q Sir --

16 MR. SORKIN: I don't think the question was
17 responded to, your Honor. We will concede that it comes up,
18 and if Mr. Feldshuh represents the number of shares we talked
19 about, we will concede that.

20 Q Mr. Rich, with regard to that due diligence
21 meeting, I ask you, sir: Do you recall stating to Mr. Moss
22 in words or substance that as far as the SEC was concerned,
23 not more than 1000 shares should be offered to any one
24 individual? Do you remember that, sir?

25 A That is a subject that came up in due diligence

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meetings in the ordinary course. I believe that the transcript you are holding probably refers to it more specifically.

Q I ask you, sir, will you please look at Page 5 of the transcript and tell me, sir, does that refresh your recollection as to what took place at the due diligence meeting with respect to these 1000 shares?

A Yes.

Q That does refresh your recollection, sir?

A Yes.

Q Upon that occasion did you ask these questions and were you given these answers --

MR. SORKIN: Your Honor, I object to this. I don't understand the relevancy. This is not the proper procedure. We conceded what is contained in this transcript as being accurately transcribed.

THE COURT: Are we going back? You want to get back to this transcript of Mr. Moss again, is that what we are doing?

MR. FELDSHUH: That is right, sir.

THE COURT: I have ruled for quite different reasons than you apparently assume, that that is not admissible.

MR. FELDSHUH: I am not saying it is admissible.

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Rich-direct

I am asking whether or not he upon that occasion asked certain questions and did he get certain answers from Mr. Moss.

THE COURT: That is just doing by the back door what the Court has already ruled you may not do by the front door.

MR. FELDSHUH: Very good, sir.

Q Having read and looked at Page 5 of the transcript, will you tell his Honor and this jury what you said to Mr. Moss and what Mr. Moss said to you?

THE COURT: No, Mr. Feldshuh. You are just continually trying to break out from under this Court's ruling. I said we were not going to get into this transcript, even by these imaginative breakouts that you keep trying.

End 6B

Tk 7A

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Rich-direct

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Q Mr. Rich, upon that occasion in words or substance what did you tell Mr. Moss?

THE COURT: No, please, Mr. Feldshuh. If you repeat this I will have to take a recess and you and I will have to get into another proceeding here which you ought to know better about at this time. You have an exception. You are not to get into the contents of that transcript of Elmer Bud Moss.

Do you hear me?

MR. FELDSHUH: I certainly do.

THE COURT: You abide by this Court's ruling, whatever you may think.

Q Upon that occasion, Mr. Rich, and apart from the transcript, was it part of your regular duties to determine the number of shares that would be issued to any one individual?

A We would not make a determination as to how many shares would be offered to one individual in a Regulation A offering. The normal practice was to set certain very general guidelines.

Q With regard to the offering of Training With the Pros, you knew at that time, did you not, that the total offering was about 42,000 shares, isn't that right?

A Correct.

1 qb-2 Rich-direct 2354
2 MR. SORKIN: At which time, the time of the
3 transfer?

4 MR. FELDSHUH: The time of the offering.

5 Q With regard to an issue of 42,000 shares, did you
6 consider that a large issue?

7 MR. SORKIN: I don't understand.

8 MR. FELDSHUH: I will withdraw the question.

9 MR. SORKIN: Is he being called as an expert?

10 THE COURT: He has withdraw the question.

11 Q With regard to that issue and having knowledge
12 that it was 42,000 shares only being offered, with regard
13 to the SEC Regulation A offering at that time, did you state
14 your views with respect to how many shares should be offered
15 to one person?

16 MR. SORKIN: At what time?

17 MR. FELDSHUH: At the due diligence meeting and
18 prior to the effective date of the offering.

19 MR. SORKIN: I object. It is his witness. It is
20 direct and I think the form is objectionable.

21 THE COURT: Do you understand him, Mr. Rich?
22 Do you understand Mr. Feldshuh's question?

23 THE WITNESS: Yes, I do.

24 THE COURT: All right. Go ahead.

25 A The staff of the Reg. A section when I was in

qb-3

Rich-direct

1 charge of it did not tell issuers how many shares they could
2 sell to any one person. What we did was to set certain
3 guidelines and explain what we thought were the general
4 principles that someone should follow especially in an offer-
5 ing that was being not underwritten but being sold by a
6 company.
7

8 Q And in this connection did you sell a statement
9 to Mr. Moss upon that occasion?

10 MR. SORKIN: I don't understand which occasion.

11 THE COURT: I don't either.

12 MR. FELDSHUH: On the occasion of the due dili-
13 gence meeting, your Honor. That is all I have been referring
14 to throughout all of this.

15 THE COURT: You have been referring to the
16 transcript of Mr. Bud Moss for most of it as far as I can
17 tell. In any event, you understand what he is referring to,
18 the occasion of the due diligence meeting.

19 A We would set guidelines. I do not recall us
20 elling somebody that you could not sell more than 1000 shares
21 or 1500 shares to any one person. It would depend upon
22 many facts and circumstances. But what we would do is
23 explain many different principles in connection with an
24 offering of securities and would set certain guidelines.

25 Q With respect to Training With the Pros and at

qb-4

Rich-direct

1 the due diligence meeting, have you a recollection as to
2 what standard you set at that time?
3

4 A Pages 5 and 6 of the transcript --

5 MR. SORKIN: Objection.

6 Q You have looked at Pages 5 and 6?

7 A Yes.

8 Q Can you state to his Honor and the jury your
9 recollection as to what standard the SEC laid down at that
10 time?

11 MR. SORKIN: I don't understand if there is a
12 standard or what he was telling Mr. Moss at the due diligence
13 meeting.

14 THE COURT: Mr. Feldshuh, I have great difficulty
15 in understanding this question too. Would you mind re-
16 phrasing it?

17 MR. FELDSHUH: Yes, sir.

18 Q At the time of the due diligence meeting, Mr.
19 Rich, did you or the SEC take a position with respect to the
20 number of shares that might be offered to any particular
21 individual?

22 A As I am trying to say, we would not be in the
23 position of saying that in no circumstances could you sell
24 more than X number of shares to any one individual. What
25 we do is to say to somebody that there are certain guidelines

1 to follow and would throw out numbers. But by exceeding
2 that number would not be any per se violation and especially
3 in an area like Training With the Pros which was a company
4 offering rather than an offering through a broker dealer.
5

6 Q Mr. Rich, subsequent to the effective date of
7 the offering, you ascertained that the guidelines which you
8 suggested were not followed, would there be an investigation
9 as to those facts for not following the guidelines?

10 MR. SORKIN: Objection, your Honor. I don't
11 understand the question.

12 THE COURT: Do you understand that, Mr. Rich?

13 THE WITNESS: I think so.

14 THE COURT: Let's not guess. Rephrase it, Mr.
15 Feldshuh.

16 Q Mr. Rich, upon this occasion and at the due
17 diligence meeting, what was the suggestion that you made with
18 regard to Training With the Pros as to the number of shares
19 to be sold to any one individual?

20 A The transcript refreshes my recollection in saying
21 that the maximum number would be in the area of 1000 shares.

22 Q 1000 shares?

23 A Yes, sir.

24 Q The due diligence meeting took place some time
25 in January, did it not, 1969?

1 qb-6 Rich-direct 2358
2 A I do not recall the exact date, but the procedure
3 was to have the due diligence meeting some time prior to the
4 effective date of the offering. The effective date of
5 the offering I believe was February 4.

6 Q With that in mind could you give us your best
7 recollection as to when this due diligence meeting was held?

8 A I think I just said that I don't recall the
9 exact date, but I know it would have taken place prior to
10 the effective date.

11 Q Would it have been much prior to the effective
12 date?

13 A Maybe about a week before.

14 Q About a week before?

15 A Or less.

16 Q About a week or less before. The effective date
17 being February 4, 1969, in other words, the due diligence
18 meeting took place in the very last week of January or the
19 early part of February?

20 A That would be the general procedure. I don't
21 recall the exact date of the due diligence meeting in Training
22 with the Pros.

23 Q You don't know any reason why Training With the
24 Pros would be different from your usual practice, is that
25 right?

1 qb-7

Rich-direct

2 A Not specifically.

3 Q Now, sir, I show you Government Exhibit 4 in
4 evidence. Will you look at that, sir?

5 A Yes, sir.

6 Q Do you recognize that document as having seen
7 it before?

8 A Yes, I believe so.

9 Q What is that document?

10 MR. SORKIN: We will concede it is the indication
11 letter from Bank Hofmann dated October 17, 1968, signed by
12 Fred Herbert.13 Q Do you remember when for the first time you saw
14 that indication letter, sir?15 A No, but it would be some time prior to May 27,
16 1969.

17 Q Prior to that date?

18 A Yes.

19 Q Could you give us a better date than that, sir,
20 and I ask you to look at Page 40 of the transcript to see
21 if that refreshes your recollection as to when you first saw
22 that letter of indication?23 A No. The reason I said May 27th was that
24 the letter referred to in the transcript is dated May 27.

25 Q The letter? It is dated October 17, I am

sorry, I misunderstood you. Try it again.

A. What I am saying is that the letter of October 17, 1968 is referred to in this transcript and the transcript was taken on May 27, 1969.

Q You say reading this page does not refresh your recollection as to when you first saw this letter?

A Correct.

Q I direct your attention, sir, particularly to lines 12 through 19 and I ask you to read that and see if it does not refresh your recollection as to when you first saw it.

A I am reading the transcript and it doesn't refresh my recollection.

Q Except that it was prior to May 27, 1969?

A Correct.

Q And it is a fact that this Government Exhibit 4 in evidence, or a copy thereof, was marked as the SEC Exhibit 1 upon this transcript, was it not?

A Correct.

Q And with regard to Exhibits marked during the course of an investigation it is the usual, regular practice of the SEC to keep copies of those documents, is that right?

A Yes.

Q In other words, a copy of Government Exhibit 4 was

1 in the possession of the SEC certainly on May 27, 1969?

2
3 A Correct.

4 Q And that copy would form a permanent part of the
5 SEC file with respect to Training With the Pros, is that
6 right?

7 A Yes.

8 Q Mr. Rich, I show you this paper and I ask you,
9 sir, can you tell us what it is generically? What is it?

10 MR. SORKIN: Can we have a mark on it, an
11 exhibit number on it so we know what we are referring to?

12 MR. FELDSHUH: In a moment, Mr. Sorkin.

13 A It is a memorandum.

14 MR. FELDSHUH: Would you mark this, please.

15 (Defendant Frank Exhibit Q was marked for
16 identification.)

17 Q Now showing you Defendant Frank Exhibit Q for
18 identification, I ask you, sir, does this memorandum bear
19 your initials?

20 A Yes, it does.

21 Q Can you tell his Honor and the jury did you prepare
22 this memorandum? Would you look at it please?

23 A Yes, I did.

24 Q And you did prepare it?

25 A Yes, V did.

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Rich-direct

1 Q And you prepared it on or about May 28, 1969, the
2 date it bears?

3 A Correct.

4 Q And it was part of the regular course of your
5 business and duties to prepare this memorandum?

6 A Yes.

7 Q And this memorandum went into the permanent files
8 of the SEC with respect to Training With the Pros?

9 A It should have.

10 MR. FELDSHUH: I offer it.

11 Will you concede this came from the files of
12 the SEC?

13 MR. SORRIN: We will concede it. There is no ob-
14 jection.

15 MR. GOULD: Can I see that for a minute after
16 it is marked?

xxx

17 (Defendant Frank Exhibit Q was received in
18 evidence.)

19 MR. FELDSHUH: May I read this to the jury?

20 THE COURT: One of your colleagues wishes to see
21 that before you do so.

22 MR. GOULD: Thank you very much.

23 MR. FELDSHUH: Ladies and gentlemen of the
24 jury, Defendant Frank Exhibit Q in evidence is a memorandum,
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Rich-direct

as the witness testified and it reads as follows:

(At this point Mr. Feldshuh read Defendant
Frank Exhibit Q in evidence to the jury.)

Q Spitzer and Rashes at that time were employed by
the SEC, isn't that right?

A Yes.

MR. FELDSHUH: No further questions, your
Honor.

THE COURT: Any questions, Mr. Gould?

MR. GOULD: No.

THE COURT: Mr. Sorkin?

MR. SORKIN: No, sir.

THE COURT: Thank you, Mr. Rich.

(Witness excused.)

end 7A

1 jge 1 Rashes - direct 2364

2 MR. FELDSHUH: I now call Mr. Rashes, with your
3 Honor's permission.

4 A L L E N R A S H E S, previously sworn, resumed
5 and testified further as follows:

6 THE COURT: All right, Mr. Feldshuh.

7 DIRECT EXAMINATION

8 BY MR. FELDSHUH:

9 Q Mr. Rashes, you have previously testified, and
10 I am correct, am I not, that you were in 1969 and presently
11 are in the employ of the Securities and Exchange Commission?

12 A Yes.

13 Q With respect to your employment back in 1969
14 you also had contact with an issue known as Training With
15 The Pros?

16 A Yes.

17 Q In connection with that issue did you undertake
18 an investigation on and after February 4, 1969, the effective
19 date of that issue?

20 A I undertook an investigation. I don't think I
21 was associated with the investigation as early as February
22 of 1969.

23 Q In what connection did you get into the matter of
24 Training with the Pros at that time?

25 A The investigation had been started by another

1 attorney in the office and I came in at a later date, about
2 probably a month or two after the investigation had
3 started.
4

5 Q Sometime, let's say, in April of 1969, sir?

6 A Sometime around that time, yes.

7 MR. FELDSHUH: May I have the SEC file, please.

8 The file is in your possession.

9 MR. SORKIN: Here we go again, your Honor. I
10 want to comply. I want to help Mr. Feldshuh. I really
11 don't know what SEC file he is talking about.

12 MR. FELDSHUH: There is only one file.

13 MR. SORKIN: That is not true.

14 THE COURT: Mr. Feldshuh, we have been through
15 this so much by this time I think you would agree if there
16 is something specific you ought to tell us. Just to say
17 the file, that is about as helpful as nothing at all.

18 MR. FELDSHUH: I withdraw that.

19 Q With regard to your practice, Mr. Rashes, was it
20 your practice to make memorandums after you had occasion to
21 meet any party in question with the work that you were doing
22 and have those memoranda go to the files? Was that your
23 practice?

24 A If it was a discussion or a conversation where there
25 was no record taking even by a stenographer, I would normally

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Rashes - direct

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2 make a memorandum of that?

3 If there was a record made by a stenographer I
4 would not make a memorandum of that.

5 Q Have you had occasion to examine the SEC file
6 with regard to Training with the Pros recently?

7 A Not recently.

8 Q Sir?

9 A Not recently.

10 Q When was the last time you looked at that file?

11 A Probably when I was working on the suspension
12 proceeding of the regulation A offering back in 1970 or
13 '71.

14 MR. FELDSHUH: I will now ask you to give me only
15 that portion of the file which deals with the memorandum
16 written by Mr. Rashes on or about April 1969.

17 MR. SORKIN: Your Honor, I think that's been
18 turned over.

19 MR. FELDSHUH: Let me see the file and I will
20 tell you if it was turned over.

21 THE COURT: You are in his way, Mr. Feldshuh.

22 Q Do you know a Miss or Mrs. Marilyn Herzfeld in con-
23 nection with the Training With the Pros?

24 A Yes.

25 Q You did?

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A Yes.

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Q Did you ever have a talk with her, sir, and if so, when?

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A I had numerous talks with her. Once we had Miss or Mrs. Herzfeld talk to us on the record. Once I visited Training With the Pros offices and talked to her. That was very early in the investigation. It was sort of the type of visit where we came up to see what they were doing up there and that is about it.

11

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Q In other words, sir, it is the fact that early in the investigation you did go to the offices of Training With The Pros, is that right, sir?

14

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Q Yes.

Q And at that time you did speak with her?

A I believe she was there, yes. I believe I spoke to her.

18

19

Q And on that occasion, on that visit, didn't you see letters of indication?

20

21

A I don't believe on that visit I did. I don't think that was the purpose of the visit.

22

23

Q What was the purpose of the visit?

24

25

A The purpose of the visit, I believe -- and it is hard to remember because it is so many years ago -- was basically to see what kinds of firm Training With The Pros was.

2 What sort of business they were in.

3 Q Did there ever come a point in time when you did
4 see letters of indication, sir?

5 A I don't know if I saw letters of indication or a
6 journal book of indications of interest for the stock.

7 Q You say you saw a journal book, sir?

8 A I believe I saw a day book or journal book of
9 indications for the stock.

10 Q I show you defendant's Frank Exhibit J in evi-
11 dence and I ask you, sir, was this the book you saw?

12 A I believe so. I would like to clarify my answer.
13 I don't know if I saw it in the book form or if Mr. Frank
14 brought up Xerox copies of this book to show to me. I saw
15 something like this.

16 Q But addressing yourselves to the early on-set of
17 the investigation, was that on or about April of 1969, sir?

18 A I could not give you a month. It was not early
19 part of the investigation, I believe.

20 Q If I told you, sir, that on May 27, 1969, Mr.
21 Moss attended the Securities and Exchange Commission at a time
22 when you were there and submitted to sworn questions and
23 answers, would that refresh your recollection as to whether
24 you saw this book prior to May 27, 1969?

25 A No, it would not. I don't remember when. I know

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Rashes - direct

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I saw this book but I don't remember whether I saw it prior to Mr. Moss' testimony or subsequent.

Q Upon your visit at that time do you recall asking to see letters of indication?

A I have no recollection of that.

Q Sir, as you testified, you did see Mrs. Herzfeld and this was not an occasion where there was sworn testimony, is that right?

A Right.

Q And it was your regular practice at that time to make a memorandum, a written memorandum of the visit?

A It might have been my regular practice. I quite truthfully can't tell you whether I did in this event or not in this event make a memorandum of this visit.

I just don't remember.

Q What else transpired at the visit, do you recall, sir?

A The only thing that clearly stands out in my mind at the visit was that we saw these models, these cardboard models of the type of training program that Training With the Pros was going to engage in.

It was like a cardboard display model with moving parts.

Q That was in connection with the business of

1 jge Rashes - direct 2370

2 Training with the Pros, is that right, sir?

3 A Yes.

4 Q Sir, do you have any recollection of any records
5 that you saw?

6 A No, I don't.

7 Q Upon that occasion, do you recall whether Miss
8 Herzfeld showed you any records?

9 A I have no real recollection of the visit other
10 than the fact that I believe I went to a hotel on the west
11 side of New York, we went in and spoke to Miss Herzfeld --
12 when I say "we", myself and Joseph Kelly, an investigator
13 on the staff of the New York Regional Office.

14 We saw the working model. I have no recollec-
15 tion of the conversation with Miss Herzfeld at that time.

16 MR. SORKIN: You said April '69, Mr. Feldshuh,
17 and I am trying to find a memo of April '69 from Mr. Rashes.

18 THE COURT: May I suggest, Mr. Feldshuh, if you
19 have nothing else I am sure if the document can be found
20 the Government isn't going to contend that it is not in their
21 file.

22 MR. FELDSHUH: Fine, sir. My plan is to offer
23 that document once it is identified by the witness.

24 THE COURT: I think what I am trying to suggest,
25 to save you and Mr. Rashes and everybody else time, if they

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Rashes - direct ' 2371

2 can find it I am sure they are not going to claim it isn't
3 a true copy and whatever he dictated if he did in fact make a
4 note on this occasion.

5 MR. SORKIN: I am really not sure about this.
6 Maybe if Mr. Rashes during the luncheon recess, looks through
7 the files he can find that particular memo.

8 MR. FELDSHUB: I am satisfied.

9 THE COURT: Do you have any other questions?

10 MR. FELDSHUB: No, and then I will stop. Once
11 the memorandum is made available --

12 THE COURT: Can you do that, take a look at the
13 file?

14 THE WITNESS: Sure.

15 THE COURT: I think now we will suspend now for
16 luncheon, ladies and gentlemen. Would you be back in your
17 jury room at 2 o'clock.

18 Mr. Brown, I have your note and I will try and
19 have an answer for you as soon as I can after lunch.

20 You may be excused.

21 Will counsel please come up here for a moment.

22 (Jury left the courtroom.)

23 (At the side bar.)

24 THE COURT: What advice do you have?

25 MR. GOULD: I would like to make a suggestion. I

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jge Rashes - direct 2372
think this man is entitled to this much consideration. Why
don't we try to finish with the defendant's case tomorrow
and then maybe resume at 12 o'clock when he can get back
here on Wednesday and work late, work until 5:30 or something
like that.

I would like to accommodate this gentleman.

MR. FELDSHUH: I agree with that.

MR. SORKIN: I am agreeable to that. My only
thought is if we are going to work five and a half hours
Wednesday afternoon, get some idea of what the length of
the summations are going to be.

MR. GOULD: I don't know. Why do we always have
to have a deal on everything?

MR. SORKIN: It is not a deal, Mr. Gould.

THE COURT: I will talk to him. I am going to
try and ask him if we could try to start at 11. That seems
to be fair.

MR. GOULD: Even 11:30, and then we will work a
little later.

THE COURT: That is all right.

MR. GOULD: That man is entitled to the same con-
sideration as the lawyers.

THE COURT: I will talk to him about it and I
will be accountable to you for what was said by both of us

1 jge Rashes - direct 2373
2 but I think we can work it out generally along the lines
3 you have suggested.
4 MR. GOULD: One question while we are all here,
5 your Honor, on this Marilyn Herzfeld business, I have been
6 thinking about it since Mr. Sorkin made his disclosure
7 and I would be completely satisfied if we could work out
8 a stipulation as to what she would say if she came back.
9 THE COURT: Fine.
10 MR. GOULD: I think that would probably save us a
11 couple of days delay. I hope to finish this case in the
12 next day or so.
13 THE COURT: Why don't you get one of your asso-
14 ciates to work it out with Mr. Flannery who apparently talked
15 to her?
16 MR. GOULD: Very good.
17 MR. SORKIN: He was on the extension the second
18 time, so you can talk to him.
19 THE COURT: All right,
20 2 o'clock, gentlemen.
21 (Luncheon recess.)
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24
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2 AFTERNOON SESSION

3 2:00 p.m.

4 (In open court, jury present.)

xx 5 A L L E N R A S H E S, resumed.

xx 6 DIRECT EXAMINATION

7 BY MR. FELDSHUH: (Continued)

8 MR. SORKIN: Your Honor, I have files here and
9 during the luncheon recess, Mr. Rashes looked through these
10 and he selected two memos.

11 The Government has looked at them. Quite frankly
12 I don't think either of them are relevant but I will pass
13 them up to your Honor.

14 THE COURT: Why don't you pass them to Mr. Feld-
15 shuh.

16 MR. SORKIN: The problem with that, your Honor,
17 it is coming from the non-public file which is what we talked
18 about. The second memo talks about things which are
19 extraneous, I think, to Mr. Rashes' testimony which I think
20 was the whole issue to begin with sometime ago when we dis-
21 cussed this.

22 MR. FELDSHUH: I haven't seen them, your Honor.

23 THE COURT: Would it really cause the Republic
24 to founder or quiver if we let Mr. Feldshuh see these two?
25 Why don't you just show them to him. I think that would be

1 gawe Rashes - direct 2375

2 better and quicker.

3 MR. SORKIN: Yes, your Honor.

4 THE COURT: While they are doing that, Mr. Brown,
5 would you like to come over here and you and I can chat
6 behind Mr. Rashes.

7 (Pause.)

8 THE COURT: Now, Mr. Feldshuh, are you ready to
9 proceed?

10 MR. FELDSHUH: Yes, your Honor.

11 I would like to ask a few questions of this wit-
12 ness concerning this situation.

13 Q Mr. Rashes, there was a Kenneth S. Spier who
14 acted as an attorney for Branch 3, was there not?

15 A Yes, there was.

16 Q April 30, 1969?

17 A Yes, there was.

18 Q What is Branch 3?

19 A The New York Regional Office, the Department or
20 Section of Enforcement is divided into four enforcement
21 branches, each at that time having approximately six enforce-
22 ment attorneys and a chief attorney heading that branch.

23 This was one of the four enforcement branches.

24 Q Mr. Rashes, during the luncheon recess you had
25 occasion to look at the file of the Securities and Exchange

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Rashes - direct

2376

2 Commission with respect to the Training With the Pros.

3 I ask you, sir, with regard to this file, there is a memo-
4 randum dated April 30, 1969.

5 A Yes, there is.

6 Q Is this a memorandum prepared and submitted by
7 Mr. Spier as attorney for branch 3?

8 A Yes, it is.

9 Q You read this memorandum, didn't you?

10 A Yes, I did.

11 Q And this concerns a conversation with Mrs.
12 Muriel Herzfeld on April 25, 1969?

13 A Yes, it does.

14 MR. FELDSHUM: Your Honor, at this time I wish to
15 point out at no time did we get any of this material as 3500
16 material. This is the first occasion that I have had to see
17 this.

18 However, in light of the fact that it is a memo-
19 randum in the file of the SEC, I will ask Mr. Sorkin to stipu-
20 late that if Mr. Spier, who was then the attorney for Branch
21 3, were present he would testify that he prepared this
22 memorandum on or about April 30, 1969?

23 MR. SORKIN: I will concede that, your Honor. I
24 haven't spoke to Mr. Spier, but I think that is what he would
25 testify to.

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Rashes - direct

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MR. FELDSHUH: Based upon that fact, your Honor,
I offer this memorandum as Defendant's Exhibit R.

(Defendant Frank's Exhibit R marked for identification.)

MR. SORKIN: May I see it? I would just like to
look at it one more time, your Honor.

(Pause.)

THE COURT: Do we have to keep Mr. Rashes here?

MR. FELDSHUH: I don't need him at all, your
Honor. I have no further questions.

THE COURT: Mr. Sorkin,, do we have --

MR. SORKIN: I have no further questions of him.

THE COURT: I'm sure the Government would like to
have him back at the SEC.

Thank you, sir. You may be excused.

(Witness excused.)

MR. SORKIN: Your Honor, I have read the document
and I think perhaps most of it is irrelevant to the issues
at trial. I'm looking at pages almost 2 through 6. There
are people in there and there are -- your Honor, if Mr.
Feldshuh wants to introduce it, I really won't object to it.

MR. GOULD: May the record show your Honor that
this memorandum was not included with any 3500 material with
respect to the witness Marilyn Herzfeld.

1
2 MR. SORKIN: That's correct, your Honor. It is
3 the Government's position now as it was then, that it was
4 extraneous to any matters.

5 THE COURT: May I see this? I'm so puzzled by
6 all of this. You tell me that it is irrelevant, but then
7 you don't object to it. Defense counsel keep telling me
8 you should have produced it as 3500 material.

9 I don't know what either one of you are talking
10 about.

11 MR. SOULD: With all respect, I urge on the
12 Court it is extremely relevant and should have been produced,
13 although I make no great moment of that right now.

14 THE COURT: You gentlemen really want to put this
15 in evidence?

16 MR. FELDSHUN: I think it is highly relevant,
17 your Honor.

18 THE COURT: The whole document?

19 MR. FELDSHUN: I didn't even have time to --

20 THE COURT: Look, you are the man who offered
21 it.

22 Don't jump on me. I'm trying to find out. You
23 are the man who offered it. Now you are telling me you haven't
24 even read it.

25 MR. FELDSHUN: I did read it. I read it so

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2 hurriedly --

3 THE COURT: May I suggest that somebody ought
4 to take a little time and read this.

5 MR. FELDSHUH: All right, sir.

6 THE COURT: It is being marked Defendant Frank's
7 Exhibit R for identification. Let's not waste any more
8 time. There's no prejudice to you. There's events in there
9 that we have heard absolutely nothing about at this time and
10 I think somebody ought to read this coolly and deliberately
11 without any more fanfare and later on after you have had
12 an opportunity to do so, then you tell me if and to what
13 extent you want to offer that document.

14 MR. FELDSHUH: All right, sir. I will accept
15 your Honor's suggestion.

16 THE COURT: I think common prudence suggests
17 you all read this.

18 MR. GOULD: We have read it, your Honor. Of
19 course I agree with your Honor that there's a great deal in
20 it that is not relevant. On the other hand, with all
21 respect, I would suggest your Honor if this had been in
22 our hands at the time --

23 THE COURT: I'm not blaming you for that, Mr.
24 Gould. I'm just offering to Mr. Feldshuh in particular, but
25 to you and Mr. Sorkin a chance to think about this because

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it is replete with matters about which no one has breathed a word in this trial.

You know that, sir.

MR. GOULD: Of course that is so.

THE COURT: I'm not blaming you or anybody else.

MR. GOULD: On the other hand, had we had this in our hands when the witness was here, it would have suggested avenues of cross examination.

THE COURT: If I spent my time deliberating on what might have been in this cruel world of ours, I would have been disintegrated in smoke in our eyes. I'm not quarreling with you, Mr. Gould. Read it.

MR. GOULD: I have read it. I agree with what your Honor says about it. On the other hand, I will urge until I am silenced by a direction from the Court, that there are parts of it that are relevant.

THE COURT: I don't want to argue. I just want you to have a chance. If you don't want it, don't take it. Mr. Feldshuh and Mr. Sorkin are also here. I want them to have a chance.

What's next, Mr. Feldshuh?

MR. FELDSHUH: I have excused this witness.

MR. GOULD: I guess it is my job to go forward. We will call Mr. Allen.

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Jerome Allen - direct

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J E R O M E A L L E N, called as a witness by the
defense, having been first duly sworn by the Clerk of
the Court, testified as follows:

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DIRECT EXAMINATION

BY MR. GOULD:

Q Mr. Allen, you are the same person Jerome Allen
who is named as a defendant in this case which is on trial,
aren't you?

A Yes, sir.

Q But you are not now being tried?

A Yes, sir.

Q Mr. Allen, what is your age?

A 47.

Q Where do you live?

A 203 East 72nd Street, New York City.

Q What is your marital status?

A I was married for 25 years, divorced in May of
'73 and then my wife and I reconciled.

Q Do you have any children?

A Yes, a son of 20 and a son of 25.

Q What is the name of your son aged 20?

A Glen.

Q What is your education, Mr. Allen?

A I have a bachelor of arts degree from Guilford

gawe Jerome Allen - direct 2382

College and a Master's Degree from Yale University.

Q At Guilford College, what did you study?

A I majored in English and Philosophy.

Q Have you served in the armed forces of the United States?

A Yes, sir. I was honorably discharged from the U. S. Navy in '45 or '46.

'45, I believe.

Q How long did you serve in the U. S. Navy?

A A little less than two years.

Q After you left the Navy, did you say you entered Yale University?

A I went back to college, sir --

MR. SORKIN: I object. I think Mr. Gould should be bound by the same rules and regulations with respect to Training With the Pros. I ask that this be stricken.

THE COURT: I don't know what the rules and regulations with respect to Training with the Pros are. I don't follow you.

MR. SORKIN: Your Honor, I would object to this as irrelevant to Training With The Pros and I would ask that Mr. Gould stick to Training With The Pros rather than bring in entire history of 20 years.

THE COURT: I think he just wants to get his

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Jerome Allen - direct 2383

education. I see no harm in that.

Q At Yale University did you get a degree?

A Yes, sir.

Q What kind of degree did you get, sir?

A It was called General Studies. It was inter-departmental, philosophy and English.

Q After graduation, what kind of work did you do? Just in a general way.

A I worked on newspapers, became a publicity man and opened -- started a stock market advisory service in 1958.

Q Sir, when you started this advisory service in 1958, was that your first contact with Wall Street, securities business?

A Yes, sir.

Q How long did that advisory service or market letter --

A I sold it in late '61, sir, early '62.

Q Are you acquainted with a gentleman named Joseph Bonavia?

A Yes, sir.

Q When for the first time did you meet Mr. Bonavia?

A Soon after I started my service in 1958 he became a subscriber to my market letter.

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Jerome Allen - direct 2384

Q Did you give him market advice and information from 1958 on?

A Yes. I served as his personal consultant.

Q Did there come a time, sir, when you met a gentleman named Philip Stoller?

A Yes, sir.

Q That is the fellow sitting over there, defendant in this case, right?

A Yes, sir.

Q When was it that you encountered Mr. Stoller for the first time?

A I believe it was '61, maybe late '60, sir.

Q Where did you meet him?

A I met him at a brokerage firm in midtown, New York called A. T. Brod.

Q Did you both work at that firm?

A No, sir, Phil was a manager and I was -- I just met him there.

Q I see.

Q Did there come a time when you both went to work for the same company?

A Yes, sir.

Q When was that?

A I believe it was late '61 or '62. I joined

1 gawe Jerome Allen - direct 2385
2 Phil at a member firm called Rubin Rosa, members of the
3 New York Stock Exchange.
4 Q You both worked there at the same time?
5 A Yes, sir.
6 Q In what capacity did you work?
7 A I was director of research and wrote their market
8 letters and Mr. Stoller was director of sales.
9 Q Thereafter, did you and Mr. Stoller work together
10 for brokerage firms?
11 A Yes, sir.
12 Q What was that?
13 A We went to a member firm called Lieberbaum and
14 Company. They were members of the stock exchange also.
15 Q When you say member firm, you mean they were
16 members of the New York Stock Exchange?
17 A Yes, sir.
18 Q That was true of Rubin, Rose and Company, too?
19 A Yes, sir.
20 Q Did there come a time when you and Mr. Stoller
21 parted company?
22 A Yes, sir.
23 Q When was that?
24 A We had a stock market advisory service called
25 Stoller Allen and I think we stopped publishing it in late '68

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gawe Jerome Allen - direct 2386
or '69 and then I moved to Florida and we maintained a
social but not a business relationship.

Q For how long did you have a social but not a business relationship?

A Well, I would say since late '69 we have not been involved in business together.

Q I see.

Mr. Allen, did there come a time when you heard of a security called Training With the Pros?

A Yes, sir.

Q When was that?

A That would be in the fall of '68, I believe.

Q Can we say October, November, 1968, is that approximately right?

A Approximately, yes.

Q At the time when you heard Training with the Pros, what was your relationship with Mr. Stoller?

A We were -- I believe at that point we were co-publishing a stock market advisory service called Stoller Allen.

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Jerome Allen-direct

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Q Did you have an office together?

3

A Yes, si r.

4

Q Where was it located?

5

A 118 East 60th.

6

Q And aside from you and Mr. Stoller, who was

7

employed in that office?

8

A A man around 65 named Joe Arden.

9

Q Anybody else?

10

A No, sir.

11

Q How did you come to hear about Training With the

12

Pros?

13

A I knew a man by the name of Ray D'Onofrio who

14

mentioned it to me either October, November 1968. I may be

15

wrong by a month. I am not sure.

16

Q Bear with me a moment, Mr. Allen.

17

How long prior to that had you known Mr. D'Onofrio?

18

A I met him I believe about a year or year and a

19

half prior to that.

20

Q So you knew him from about '66 or '67 on, right?

21

A Approximately, sir.

22

Q Had you had any business relations with D'Onofrio

23

prior to that?

24

A I had no direct business relations with him. He

25

asked me to make certain contacts for him.

1 gab-2

Jerome Allen-direct

2 Q But in 1968 when he talked to you for the
3 first time about Training With the Pros, you had no
4 business relations with him?

5 A No formal business, no.

6 Q Sir, do you remember when it was, where it was
7 that you first talked with D'Onofrio about Training With
8 the Pros?

9 A I believe it was at a firm on Pine Street called
10 Hancock Securities.

11 Q Hancock?

12 A Yes, sir.

13 Q Who was present?

14 A The first time he mentioned it, sir?

15 Q That's right.

16 A I believe Phil and I were present.

17 Q Phil Stoller?

18 A Yes, sir.

19 Q You and he and D'Onofrio, right?

20 A Yes, sir.

21 Q Anybody else?

22 A Well, the people who owned the firm may have come in
23 and out. I don't remember. There was a man named Morty
24 Tover who owned the firm. He may have stuck his nose in,
25 but I can't swear to that.

1 gab-3 Jerome Allen-direct 2389
2 Q If you can remember, what did D'Onofrio tell
3 you at that meeting at Hancock Securities about Training With
4 the Pros?

5 A He told me that there was a company that had
6 organized a system of vocational training for underprivileged
7 kids, that the company was -- had what you would call a token
8 contract from McGraw-Hill that could conceivably expand
9 to a large contract, that the company was going to go public
10 through what is known as a self-underwriting and he said the
11 company had exciting possibilities and I should take a look
12 at it as an analyst.

13 Q Anything more that you can remember about the
14 conversation?

15 A No, except he did tell me to research the company.
16 He suggested that I research the company.

17 Q What does that mean, research the company?

18 A To visit the company, to make a judgment as to
19 whether it had any speculative possibilities, to do an
20 analytical study of the company.

21 Q Did you do that?

22 A I went to see them a few times after that con-
23 versation.

24 Q Went to see whom?

25 A Bud Moss, the president of Training With the

1 gab-4

Jerome Allen-direct

2 Pros.

3 Q Did you have conversations with Mr. Moss about
4 the affairs of the company?

5 A One or two conversations, yes, sir.

6 Q Did you encounter a lady named Herzfeld at the
7 offices of the company?

8 A Yes, sir. I believe she was his secretary.

9 Q Did you have conversations with Mrs. Herzfeld
10 about the affairs of the company?

11 A Yes, I did, sir.

12 Q Did you also have conversations with anybody at
13 McGraw-Hill about the affairs of the company?

14 A I met one of their sales executives.

15 MR. SORKIN: May we have the time, your Honor?

16 MR. GOULD: I will fix the time, your Honor.

17 A I believe his name started with -- Halper or Helper
18 I am not sure.

19 Q When was it that you talked to the McGraw-Hill
20 people?

21 A I believe it was before the company's stock
22 went public. I would have to say early '69 or late '68.
23 Again I can't swear to a date.

24 Q At the time that you encountered Mr. D'Onofrio
25 in the fall of 1968 and discussed Training With the Pros, did

1 gab-5

Jerome Allen-direct

2 you have any relationship with Bank Hofmann in Zurich?

3 A Yes, sir.

4 Q What was your relationship at that time?

5 A I had served in an advisory research capacity
6 to the bank and I had directed business to the bank.

7 Q Were you compensated by the bank for those ser-
8 vices?

9 A Not by the bank directly but by clients of the
10 bank.

11 Q In what way were you compensated?

12 A I can give you a theoretical example.

13 Q Just tell me.

14 A I would receive 5 per cent of the profits of a
15 stock that I suggested the bank buy for their clients.

16 Q How about losses?

17 A No, I would not be held responsible for losses.

18 Q At that time, to your knowledge, did Mr. Stoller
19 have -- at that time I mean now October, November 1968 -- did
20 Mr. Stoller have a relationship with the Bank Hofmann?

21 A Similar to mine, yes, sir.

22 Q You and he discussed this relationship from time
23 to time?

24 A Yes, sir.

25 Q Who at the Bank Hofmann did you know and have

1 gab-6

Jerome Allen-direct

2 anything to do with?

3 A I knew many people there from Dr. Meyer, the
4 managing director, down to the secondary levels, Mr. Herbert,
5 Mr. Huber, Jack Behr. I knew 10 or 11 people intimately.

6 Q Come back now to your conversations with
7 D'Onofrio.

8 Did there come a time when you were informed
9 by D'Onofrio -- that the company was contemplating a public
10 offering?

11 A Yes, sir.

12 Q When was that?

13 A I would say it was late '68, early '69.

14 Q Do you remember where you had that conversation
15 with him?

16 A I am not sure, sir, whether it was at his office
17 or my office. It is --

18 Q Do you remember who was present?

19 A Phil was -- Phil may have been present. I think
20 he was.

21 Q Phil Stoller?

22 A Yes, sir.

23 Q Do you remember what it was that D'Onofrio told
24 you about this contemplated public offering?

25 A He said that it was a very exciting company, that

1 gab-7

Jerome Allen-direct

2 they were acting as their own underwriter. I don't believe
3 at that time he specifically gave us the price the stock
4 would be sold at.

5 I asked him if the stock would be available to
6 some of my clients and he said it depends how many shares
7 the company sells to the public. I didn't know at that
8 point whether it would be 100,000 or 300,000 offered.

9 Q Did there come a time when you learned what the
10 company was contemplating as a so-called Regulation A offering?

11 A Yes, sir. That would be at that time less than
12 300,000 worth of stock.

13 Q You knew what a Reg. A offering was?

14 A Yes, sir.

15 Q Would you tell us what you understood a Regulation
16 A offering to be?

17 A At that time it has been adjusted upwards, but
18 at that time it meant that the total amount of stock sold
19 to the public could not exceed \$300,000.

20 In other words, 100,000 shares at 3, 300,000 at
21 1 would make it.

22 Q As long as the aggregate amount of securities sold
23 to the public did not exceed the then statutory exemption of
24 \$300,000?

25 A Yes, sir.

gab-8

Jerome Allen-direct

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Q Is that it?

3

A Yes, sir.

4

Q You were familiar with that at the time?

5

A Yes, sir.

6

Q That is what you discussed with Mr. D'Onofrio,

7

is that right?

8

A Yes, sir.

9

Q That kind of offering?

10

A Yes, sir.

11

Q All right. Now, did there come a time, sir, when

12

either you or, to your knowledge, Mr. Stoller advised anybody

13

at the Bank Hofmann about the forthcoming public offering

14

of Training With the Pros?

15

A Yes, sir, I did.

16

Q You did?

17

A Yes, sir.

18

Q When was that?

19

A I believe in December, January I told the bank

20

that I -- if I can use the word -- liked the possibilities

21

of the company called Training that was about to go public,

22

and I told the bank it was highly speculative and that if

23

these contracts materialized it could be an exciting company.

24

Q Mr. Allen, I show you a Xerox copy of a

25

document marked in this case as Government Exhibit 4. It

1 is a letter from the Bank Hofmann to Training with the Pros.
2
3 It is dated October 17, 1968.

4 I ask you if you have ever seen that letter before?

5 A Yes, sir, I have seen this, a copy of this.

6 Q Yes, you have seen it?

7 A Yes, sir.

8 Q Whendid you see it for the first time?

9 A In Mr. Sorkin's office.

10 Q What year?

11 A When I came back from Switzerland in January of
12 this year.

13 Q I see. 1974?

14 A Yes, sir-

15 Q This letter you will note is dated October 17,
16 1968. Did you know of it at any time in 1968?

17 A No, sir, I don't recall I did.

18 Q Did you see it --

19 MR. SORKIN: I didn't hear his last answer.

20 A No, sir, I don't recall.

21 MR. SORKIN: Thank you.

22 Q Is it that you didn't see it or you don't remember
23 seeing it?

24 A I don't remember seeing it.

25 Q All right. Did you have anything to do with the

1 preparation of this letter?

2 A No, sir.

3 Q Did you have any conversation with anybody in
4 or about October 1968 about the sending of this letter?

5 A No, sir.

6 Q Do you know anything about the circumstances
7 in which this letter was sent?

8 A No, sir.

9 Q I am not sure I got a response to this. You
10 say it was in January or thereabouts, January '69 that you
11 informed the Bank Hofmann about Training With the Pros?

12 A Yes, sir. It may have been December. Again,
13 it is so long ago I can't remember the exact month.

14 Q It would be either December of '68 or January
15 of '69, is that your best recollection?

16 A Yes, sir.

17 Q Whom did you advise?

18 A I told Fred Herbert -- not that I told, I
19 advised Fred Herbert and a man named Jack Behr that it was --
20 it could be another winner like Franklin Mint.

21 MR. SORKIN: May we have the place and if
22 anyone else was present and what was said in the entire con-
23 versation?

24 Q How did you advise Mr. Herbert?

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A I telephoned him.

Q Who was present, if anybody, when you telephoned him?

A I think I was by myself.

Q Sir, at that time did Mr. Herbert indicate to you in any way that he knew about this company?

A Yes. He said he had heard from Mr. D'Onofrio that there would be a public offering and he said that he wished there was more stock being sold than there was because it would be difficult for the bank to buy it if it was a limited number of shares.

Q Now, sir, during this month of January 1969 did you alone or together with Mr. Stoller make any visits to the offices of Training With the Pros?

A Yes, sir. I think Phil and I went there and we saw a training film, literally training film for training.

Q Did Mr. D'Onofrio accompany you to that office?

A I believe he was there. I don't know whether he literally went with us or met us.

Q You think he was there while you had these meetings?

A Yes, sir.

Q While you were there in January of 1969, did you have any discussions with Mr. D'Onofrio about the forthcoming public offering?

1 gab-12

Jerome Allen-direct

2 A Yes.

3 Q Would you tell us now, and please as you do, Mr.
4 Allen, we would be grateful if you would specify as closely
5 as possible the date, who was present and what was said.
6 Stick to January 1969.

7 A I believe it was at this meeting that Ray told
8 Phil and myself that the contemplated offering would be
9 40 or 42,000 shares at I believe -- at \$7, which would qualify
10 as a Reg. A.

11 I said to Ray, "Why don't you sell like 300,000 at
12 one?"

13 He said that wasn't for me to ask, that was
14 company policy.

15 Then we saw the Training film and we met some
16 people from McGraw-Hill. I am not sure whether Mr. Stoller
17 met the McGraw-Hill people, I don't remember that.

18 Q When you learned from D'Onofrio in January 1969
19 that the security was coming out at \$7 a share, and that
20 there would be an aggregate of 42,000 shares, did you advise
21 the people at Bank Hofmann of that?

22 A Yes, sir, I did.

23 Q Whom did you advise?

24 A Freddy Herbert.

25 Q When?

1 A This was about a month before it actually went
2 public. I would say January.

3 Q By telephone?

4 A Yes, sir.

5 Q Was anybody on the phone with you and Mr. Herbert
6 when you did that?

7 A I don't believe so. Phil may have been in the
8 office, but I made most of the contact with Freddy.

9 Q When you advised Mr. Herbert that the 42,000
10 shares were coming out at \$7, what, if anything, did he say
11 to you?

12 A He said if there was such a thin issue, there would
13 be no point in the bank trying to get a block in their name
14 because I believe I told him on the phone that Mr. D'Onofrio
15 or Mr. Moss had been told at what is known as a due diligence
16 meeting meeting by the SEC that no one person should be per-
17 mitted to buy more than 1000 shares. I don't know whether
18 it was advice or legalistics. I told this to the bank.

19 They said if there is only 42,000 shares, we
20 certainly can't get a sizable block for our people.

21 Can you and Mr. Stoller buy some stock and
22 we will pay you a premium for it.

23 Q Anything else in that conversation?

24 A He told us to keep abreast of the company and to
25

gab-14

Jerome Allen-direct

1 alert them as any developments of the company stands.

2 Q Now, sir, in this conversation with Herbert, was
3 anything said about your conversation if you were successful
4 in obtaining them a block of this stock?
5

6 A Yes, sir. When I told Freddy it was --

7 Q Freddy Herbert?

8 A Herbert. When I told Freddy it was coming at
9 \$7, he said, "If you and Phil or you and someone else can
10 buy a stock or get some people to try to buy a block, we
11 would take it off your hands at a premium, negotiate that
12 block at \$10 and then you would still have a profit if the
13 stock came at 7 and you would have a 7 per cent carried
14 interest in the profit accruing to our clients at the bank.
15 In other words, there would be no risk. You would make a
16 three point premium, two points, and you would still have 10
17 per cent of potential profits.

18 Q Did you advise Mr. D'Onofrio of this conversation,
19 this conversation between yourself and Herbert?

20 A I may have. I honestly can't swear either way.
21 I may have.

22 Q What did you do, if anything, after you had this
23 conversation with Herbert?

24 A I asked some friends of mine if they would send
25 a letter to the company indicating an interest in buying a

1 gab-15

Jerome Allen-direct

2 thousand shares and if they got it, I would like to buy
3 it from them I think at 8-1/4, 8-1/2.

4 Q Whom did you ask to do this, names?

5 A I asked my wife, Janice, a man named Willard
6 LaMorte, an old friend of mine.

7 Q Right. Anybody else?

8 A A man who worked for me named Joseph Arden.

9 Q Anybody else?

10 A Joe Arden's wife names Arah, and I also indicated
11 a thousand shares for myself.

Tk 1H PM

qb-1

Jerome Allen-direct

Q So you had altogether 5000 shares, is that right?

A I didn't know I would get it but after the issue came out I did have 5000.

Q You indicated for 5000, is that correct?

A Yes, sir.

Q Did you discuss this conversation with Mr. Herbert and did you discuss that with Stoller?

A Yes, sir.

Q When?

A After I spoke to Freddy I said, "Phil, we can get a two or three point premium, have 10 per cent carried interest without any risk. It is a hell of a deal, can you get some people to indicate for you?"

Q What did he say to you?

A He said he would try.

Q Do you know if he did get some people?

A He told me he did, yes, sir.

Q Did he tell you whom he had gotten?

A I remember he mentioned his mother, Ruth; Delore Abramson, his mother-in-law, a man name Tolansky, I believe -- I don't know how to spell it -- who was related I think to Joe Arden. There was his mother, his mother-in-law, Tolansky, Phil himself, and he may have used his wife. I don't recall

the fifth buyer.

Q Is it correct to say that he also found five people who would indicate for 1000 each?

A Yes, try to get 1000 each.

Q Yes, indicate.

A Yes.

Q Did there come a time when you were advised that the offering circular on the Regulation A offering had become effective?

A Yes, sir.

Q I show you a paper which has been marked in this case as Government Exhibit 1 and I ask you if you saw that in or about the month of February 1969?

A Yes, sir, that is it.

Q About when did you see it?

A I saw that just about the time they went public. I don't think Reg. A's had a preliminary, what you call a red herring, but I saw it in mid-February.

Q When it became effective?

A Yes, sir.

Q Who delivered a copy?

A I don't know whether it was Ray or Bud Moss, I can't remember.

Q Now, sir, between the time that you first learned

1 about Training With the Pros and its prospective public
2 offering, how many times did you see Mr. Moss, would you say?

3
4 A Before it went public?

5 Q Yes, before it went public.

6 A Mr. Moss or Miss Herzfeld I would say three or
7 four times on the outside.

8 Q Following the time when the offering circular
9 became effective did you or any of your so-called nominees,
10 these people that you worked with, did they get the stock?

11 A Yes, sir, my people received 5000 shares, including
12 my thousand.

13 Q In other words, you got 1000 shares?

14 A My wife got 1000 and they got 3000.

15 Q And each one paid --

16 A \$7 a share.

17 Q Is that right?

18 A That's right.

19 Q Did you issue a check for your own \$7000?

20 A Yes, sir.

21 Q And y our wife?

22 A Yes, sir.

23 Q And as far as you know the other people each paid
24 \$7000, correct?

25 A I think they put up their own money, but I can't

1 qb-4

Jerome Allen-direct

2 swear to that.

3 Q Did you put up money for anybody?

4 A I may have. I know I paid for myself and my wife.

5 I may have loaned to the other three, but I don't believe

6 I did though.

7 Q What did you do with the certificates that you
8 received in Training With the Pros?

9 A First, I had the people sign the back of them.
10 I had them sign the back of the stock certificates.

11 Q You mean endorse them?

12 A Yes.

13 Q Endorsed in blank or endorsed to some specified
14 person, do you remember?

15 A I asked the people who bought the stock to sign
16 the back of them because since I was buying it from them they
17 just couldn't be an unendorsed certificate.

18 Q So you got them each to endorse the certificate,
19 right?

20 A Yes, sir.

21 Q And then they delivered the certificates to you?

22 A Yes, sir.

23 Q What did you do? Did you pay them?

24 A I paid them 8-1/4 or 8-1/2. I think it was
25 8-1/4.

1 qb-5

Jerome Allen-direct

2 Q Did you give each of them a check other than
3 yours?

4 A Yes, I did.

5 Q Then what did you do with the certificates?

6 A I don't know whether I mailed them overseas or
7 I may have given them to Phil or Mr. D'Onofrio to bring over.
8 I don't remember that, sir.

9 Q When you turned those certificates over either
10 to Mr. Stoller or Mr. D'Onofrio, did you have letters evidenc-
11 ing the sale of these buyers to yourself?

12 A Yes, I had typed or I had prepared --

13 MR. SORKIN: I don't think there is a question..

14 Would you like these?

15 MR. GOULD: Yes, I would like those.

16 The answer to his question is yes, that he did
17 have letters and I will show him the letters.

18 Q I show you these papers, sir, which have been
19 marked in this case as Government Exhibits 21, 22, 23, 24 and
20 25.

21 Are those the letters that you gave either to
22 D'Onofrio or to Stoller together with the stock certificates?
23 Look them over.

24 A I remember the letters, Mr. Gould. I may have
25 sent the bill of sale or these letters to Switzerland

1 independent of the stock. I am not sure. I don't know
2 whether they went with the stock or independent but these are
3 the letters I typed.
4

5 Q You typed these yourself?

6 A Yes, sir.

7 Q Did you obtain the signatures yourself? What
8 does this say?

9 A Joseph Arden.

10 Q You got him to sign that?

11 A Yes, sir.

12 Q Sarah Striziver?

13 A That is his wife, Sarah Striziver.

14 Q That is Arden's wife?

15 A Yes. This is Willard LaMorte, a friend of mine.

16 Q Were all of these signed in your presence?

17 A Yes, they were.

18 Q I direct your attention to the fact that each
19 one of them appears to have been notarized by Mr. Martin Frank
20 Can you tell us how that came about?

21 A After I sent over the original bill of sale
22 Freddy Herbert called me one day and said, "Jerry, the
23 back office needs verification or notarization of the
24 people you bought it from. Since you can't come to Switzer-
25 land at this point could you have another bill of sale typed

1 gb-7

Jerome Allen-direct

2 and have them notarized, all endorsed by a bank or attorney."

3 Q Tak a look, Mr. Allen, at Government Exhibit
4 26, 27, 28, 29, 30 and 31. Did you prepare those documents
5 too?

6 A I believe I did.

7 Q When I say those, I mean the originals of them.

8 A Yes.

9 Q These are Xeroxes. What did you do with the orig-
10 inals of Exhibits 26 through 31 inclusive? What did you
11 do with them after you typed them?

12 A I gave them to Phil to have his people sign them.

13 Q You had nothing to do with having them signed?

14 A No, sir.

15 Q He had them signed as far as you know?

16 A Yes, sir.

17 Q You said something about bills of sale prior
18 to the execution of the papers which are Government Exhibits
19 21 through 26, inclusive, do you remember that?

20 A Yes, sir.

21 Q I show you two pieces of paper which we have here
22 which have been marked as Frank Exhibits O and P for identi-
23 fication. Do you know what those are?

24 A This appears to be the same type face as my type-
25

2 writer.

3 Q Did you prepare the originals of those papers?

4 A Yes, I did.

5 Q When you prepared the originals of these two
6 papers, sir, do you see this home address over here, 31 Ocean
7 Parkway?

8 A Yes.

9 Q Was that in there when you prepared them?

10 A That I don't recall, sir.

11 Q But you prepared them. What did you do with the
12 originals of these two papers?

13 A The originals went to Switzerland.

14 Q When you prepared them they weren't signed, were
15 they?

16 A No, sir.

17 Q Do you know how they got to be signed?

18 A I gave them to these people to have signed.

19 Q Each one of these buyers got such a letter,
20 correct?

21 A Yes, sir.

22 Q Then they were given back to you signed?

23 A Yes, sir.

24 Q And this one here, Frank Exhibit O for identifica-
25 tion, came back to you from Mr. Arden, correct?

1

2

A Yes, sir.

3

4

Q And this one, Frank Exhibit P for identification,
came back to you from Mr. Arden?

5

A Yes, that is his wife.

6

7

Q In other words, it is your testimony that the
originals of these two papers were in fact delivered to you
by Mr. Joseph Arden?

8

9

A Yes, sir.

10

Q And that was at or about February 20, 1969?

11

A That is right, sir.

12

13

Q Do you remember where they were delivered to
you?

14

A I believe at my office on East 60th.

15

Q But you do recall that he delivered them to you?

16

A Yes, sir.

17

18

MR. GOULD: I offer them in evidence or I
renew Mr. Frank's offer of them at this time.

19

MR. SORKIN: No objection, your Honor.

20

21

MR. GOULD: I think they can keep the same designation,
your Honor.

22

THE COURT: Yes.

xxx

23

24

(Frank Exhibits O and P were received in
evidence.)

25

Q Going back to these two letters, Mr. Allen, again

1 qb-10

Jerome Allen-direct

2 you do not know whether you put in this home address
3 business on the lower left-hand corner?

4 A I can't swear to it, yes or no.

5 Q You said before that the upper part of the letter
6 looked like your typewriter.

7 A Yes, sir.

8 Q How about the lower part, home address, does that
9 look like your typewriter?

10 A It does. The type face seems a little lighter.

11 Q You can't tell?

12 A No.

13 Q We do have it then, do we not, Mr. Allen, that
14 with respect to the ten people, your five nominees and
15 Stoller's five nominees, together you got bills of sale or
16 letters of sale from each one of them, is that right?

17 A Yes, sir.

18 Q And they were delivered either to Stoller or
19 D'Onofrio for delivery, all ten of them?

20 A Or mailed over, I am not sure.

21 Q You are not sure how they got to Switzerland?

22 A No.

23 Q But it is your testimony in one way or the other
24 they were sent to the Bank Hofmann in Switzerland?

25 A Yes, sir.

qb-11

Jerome Allen-direct

1 qb-11 Jerome Allen-direct
2 Q When you got those you paid \$8.25 per share to
3 each one of those nominees, did you not?

4 A Yes, sir.

5 Q And the purpose of sending them to Switzerland
6 was, was it not --

7 MR. SORKIN: I think Mr. Gould is drifting
8 into cross-examination.

9 MR. GOULD: I don't think I am drifting at all.
10 Y our mind may be drifting but I am not.

11 MR. SORKIN: I ask that questions be put to Mr.
12 Allen in the proper method. I am objecting as to form now.

13 MR. GOULD: Let's see if we can meet the strict
14 technical requirements of Mr. Sorkin.

15 THE COURT: I can't say that I agree that we are
16 drifting into cross-examination, Mr. Sorkin, but I have
17 lost the thread. Would you mind going back?

18 MR. GOULD: Sure.

19 Q Prior to sending these documents to Switzerland,
20 did you and Mr. Stoller have a conversation about them?

21 A Yes.

22 Q Was Mr. D'Onofrio present when you had this
23 conversations about sending these documents and the stock certi
24 ficates over to Switzerland?

25 A I don't remember.

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Q But you do remember talking to Phil Stoller?

A Yes, I do.

Q Would you be good enough to tell his Honor and the jury what you discussed with Stoller about sending these papers, these bills of sale, and the stock certificates over to Switzerland?

MR. SORKIN: May we have where and when?

MR. GOULD: Yes.

Q Tell us where this conversation took place, when it took place as best you can recall, and who was present. I think you told us you and Stoller.

A I was in the office with Phil and we had already made an arrangement to sell our stock at 10 to the bank after buying it from the nominees at 8-1/4. In order to be paid by the bank we had to physically get the certificates to them plus proof of ownership or the bill of sale. The stock and the bill of sale went to Switzerland and the bank confirmed to us that they bought it at \$10.

End 2A PM

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Jerome Allen - direct

2414

2 Q How did they confirm that to you, orally or in
3 writing?

4 A By phone. I said, "When you get the certifi-
5 cates, please send my check" and I don't know whther Phil
6 wanted his check sent or held there. I don't know.

7 Q You were entitled to a check for \$50,000, weren't
8 you?

9 A Minus commission, yes, sir.

10 Q And did you get such a check?

11 A Yes, sir, they mailed me \$49,000.

12 Q Did you put it in your bank account?

13 A I put it in the Royal Bank of Canada.

14 Q Did you declare the profit of 275?

15 A Yes, sir, I did.

16 Q As taxable income?

17 A Yes, sir.

18 Q You didn't try to conceal it in any way?

19 A The check was mailed to me and put right in the
20 bank.

21 Q You didn't put that check in any Swiss account,
22 did you?

23 A No, sir.

24 Q What bank did you put it in?

25 A The Bank I used for seven years and submitted with

2 my returns, the Royal Bank of Canada.

3 Q Do you know whether Mr. Stoller got a check in a
4 like amount?

5 A He received a check -- I didn't physically see it.
6 He told me he received one.

7 Q Do you know what he did with it?

8 A I don't know where he deposited it but he said he
9 received it.

10 Q Did he tell you what he had done with the check?

11 A He just said he deposited the check. I assume
12 it was the States but I can't prove that.

13 Q By the way, you didn't go to Switzerland yourself
14 in February 1969, did you?

15 A No, sir.

16 Q Was there some reason why you didn't go your-
17 self?

18 A Yes, sir, I was under indictment and in order to
19 go overseas I had to make a motion before the Judge that
20 was sitting in the motion section.

21 Q You were not under indictment in this case, were
22 you?

23 A No, sir, I was under indictment in a case called
24 Pentrons Electronics.

25 Q That was a securities case?

1 jge

Jerome Allen - direct

2416

2 A Yes, sir.

3 Q Did Mr. Stoller have anything to do with that?

4 A No, I was indicted.

5 Q As far as you know he had nothing to do with
6 that?

7 A No.

8 Q Did there come a time when you heard from Mr.
9 Herbert in Switzerland about some problem with respect to
10 the transfer of the Training With the Pros stock?

11 A Yes, sir.

12 Q When was that?

13 A After he received the stock and the bill of sale
14 he called me one day at my office on 60th Street and he put
15 me on the phone to somebody named Jack Behr who was the
16 back office supervisor.

17 Freddy said he didn't understand the techni-
18 calities of paper and Jack Behr said "You have to have -- we
19 don't know the people who sold you the stock --"

20 MR. SORKIN: I object to what this gentleman
21 named Jack Behr said.

22 Q Was Mr. Herbert still on the phone with you?

23 A Yes, sir.

24 Q Just go ahead and tell us what he said.

25 A He said that since you can't come over here at

1 jge Jerome Allen - direct 2417
2 this time, Jerry, it's necessary for the bank to have the
3 bill of sale --
4 MR. SORKIN: I still object. I don't see what Mr.
5 Herbert has to do with being on the phone.
6 MR. GOULD: He is a co-conspirator the way I under-
7 stand this case.
8 MR. SORKIN: So is Mr. Allen.
9 MR. GOULD: So what?
10 MR. SORKIN: I object.
11 THE COURT: I am going to sustain the objection.
12 I don't think the fact that because Herbert Allen were on
13 there with somebody else, has to do with the conspiracy.
14 In any event, is it really that important?
15 MR. GOULD: It is very simple, your Honor. I
16 don't mind. There is no problem for me.
17 Q Did you report the telephone conversation that
18 you had with Herbert to Mr. Stoller?
19 A Yes, they wanted --
20 Q Just yes or no, Mr. Allen.
21 A Yes.
22 Q You did?
23 A Yes.
24 Q Did you report it to D'Onofrio?
25 A That I don't remember.

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Jerome Allen - direct 2418

2 Q What did you tell Mr. Stoller about it?

3 A I said that the bank wanted my bill of sales
4 notarized by an attorney, a notary or a bank officer in the
5 States. The bill of sale I sent over were not notarized.

6 Q We know that.

7 Just tell us what you told Mr. Stoller about the
8 conversation.

9 A I would have to type up another set of bill of
10 sales and have the people who signed them notarize their
11 signatures.

12 Q In other words, sir, what you had sent over were
13 bills of sale similar to Frank Exhibits O and P, correct?

14 A Yes, sir.

15 Q And they had no notarization in them?

16 A That is right.

17 Q And you told Mr. Stoller that the bank wanted
18 something like that notarized?

19 A Yes, sir.

20 Q Then what happened after that, about getting
21 these things notarized?

22 A I typed up a second set of bill of sale. I
23 brought them to a notary's office, to a lawyer's office,
24 and I told the three people involved, other than my wife,
25 to go to his office and have them notarized.

1 jge Jerome Allen - direct 2419.

2 Q Now, sir, let's go back to Exhibits 21 through 25.
3 Wait a minute, let me make sure I am right.

4 Let's go back to Government's Exhibits 21 through
5 25 inclusive.

6 Are those copies of the papers that you had
7 typed up?

8 A That is the second set, yes, because they had to
9 be notarized.

10 Q These you say you took to a lawyer's office?

11 A I took them in blank and had the people go to
12 the lawyer's office.

13 Q Which lawyer did you take them over to?

14 A My own lawyer, Marty Frank.

15 Q This gentleman sitting right here?

16 A Yes, sir.

17 Q And did you explain to Mr. Frank what you
18 wanted?

19 A I said that the bank wanted him to notarize some
20 signatures for people that Marty knew so I asked the people
21 to go to Mary's office.

22 Q Were you there when the people went to Marty's
23 office?

24 A I believe when Joe Arden and his wife went there
25 and I think for my own wife, I had power of attorney and I

1 jge Jerome Allen - direct 2420

2 signed for her.

3 Q Arden and his wife, you saw them sign this?

4 A Yes, in front of Mr. Frank.

5 Q And he put the stamp on it and he signed?

6 A That is right.

7 Q We have somebody here -- LaMorte?

8 A I was not present when that was notarized.

9 Q You don't know about that, all right.

10 Janice Allen.

11 A Janice Hickok, that is her maiden name. I signed
12 that on the power of attorney I had.

13 Q You signed twice, right? Janice Hickok and
14 Janice Allen and that is your handwriting?

15 A Yes, sir.

16 Q And you had a power of attorney to sign for her?

17 A For her maiden name and my own name.

18 Q And, of course, you did sign your own?

19 A Yes, sir.

20 Q When you signed that, was that in Mr. Frank's
21 office, too?

22 A Yes, sir.

23 Q And did he notarize it?

24 A Yes, sir.

25 Q And he said something to you?

1 A I said, "This is what the bank wants," he
2 notarized it and I sent it in.

3 Q What did you do with these notarized documents,
4 Government's Exhibits 21 through 25, inclusive, after they
5 were notarized?
6

7 A I don't know, Mr. Gould, whether I sent them over
8 or I may have given them to a correspondent of the bank.
9 I am not sure.

10 Q Did you give them to Mr. Stoller?

11 A I may have. It was not that important.

12 Q Please turn your attention to the months of
13 March 1969.

14 In March 1969, Mr. Bonavia had been a client of
15 yours for sometime, had he not?

16 A Yes, sir, from '58 on.

17 Q Did he come to your office in March of 1969, if
18 you recall?

19 A Yes, sir.

20 Q And did he have a meeting with you and Mr.
21 Stoller?

22 A He did. He was not feeling too well but he was
23 there, yes, sir.

24 THE COURT: Who was not feeling too well?

25 THE WITNESS: Mr. Bonovia was there and he was

1 jge

Jarome Allen-direct 2422

2 not feeling well.

3 Q Do you remember the date as being March 1969?

4 A I can only pinpoint it in that it came after the
5 stock went public.

6 Q In other words, it was sometime after the Training
7 With the Pros stock had become public, correct?

8 A And it was after I returned from my anniversary in
9 Florida.

10 It was after March 5.

11 Q After March 5, all right.

12 Now, we have then Mr. Bonavia coming to your
13 office along with Mr. Stoller and you said he was not feeling
14 very well and did you have a conversation?

15 A Yes, we did.

16 Q Was anybody else present besides you and Stoller
17 and Bonavia?

18 A I think Joe Arden was there but, again, I can't
19 swear to that.

20 Q Tell us what the conversation was?

21 A As always we reviewed all of Joe's holdings, went
22 over his confirmation slips with him, slips from both
23 American brokers and Swiss banks, and then I said to Joe
24 that I am looking at a company that just went public that
25 could be a hell of a winner and I would like him to go over

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jge Jerome Allen-direct 2423
and meet the principals. He had a very bad cold. I believe
he was staying at the Hotel Roosevelt. He said if we like
it he would buy it because we had had a good batting
average with him.

Q You tell us what you remember about the conver-
sation, go ahead.

A I said, "Joe, if they get that McGraw Hill con-
tract it is another Franklin Mint. If you don't, you have
had loses before, you can't have all winners." He
asked me if I visited the company and I said yes, I had done
my homework. He said, "Okay," I would like you to buy me
a substantial block of stock, eight or ten thousand shares."

I said, "Joe, you have to place that order" and he
said he would go home and place the order.

Q Is that the end of the conversation?

A I may have skipped some of the nuiances but there
was personal conversation as well plus he went over all
the slips he received from the Banc Hofmann.

Q In that conversation did he ask you any questions
about the precise nature of the McGraw Hill relationship?

A Yes, sir, we explained it as we knew it or under-
stood it.

Q Do you remember what you told him about it?

A We told him that if the textbook division --

1 jge

Jerome Allen-direct

2424

2

MR. SORKIN: Objection as to we told him.

3

A Phil and I were talking to Joe back and forth.

4

Q Do you remember which one of you said what?

5

A No, sir, we both contributed.

6

Q What you are communicating to his Honor and the jury
7 is the substance of the conversation, is that correct?

8

A Yes, sir.

9

THE COURT: Tell me something, Mr. Allen, at this
10 conversation did you have any idea as to who the broker was
11 that you were telling Mr. Joe Bonavia to make his own
12 order for?

13

THE WITNESS: He wanted to buy it at the Bank
14 Hofman, your Honor.

15

THE COURT: I thought you just told us that you
16 told him when he asked you to pick up 9 or 10,000, you said
17 "Go buy it yourself."

18

THE WITNESS: Yes, sir. That meant he had to give
19 the order himself.

20

THE COURT: Through whom did you have in mind
21 that he would do that?

22

THE WITNESS: To the Bank Hofman, your Honor. He
23 also bought stock on occasion through Hornblower, Weeks, in
24 the Midwest. He wanted to buy this in his account at the
25 Bank Hofman.

1 jpe Jerome Allen-direct 2425

2 THE COURT: I see. He already had an account
3 there, to your knowledge?

4 THE WITNESS: He had an account at the Bank
5 Hofman since 1962, to my knowledge, your Honor.

6 THE COURT: I see.

7 If you can recall, tell us which was it that you
8 suggested that he do, Hornblower or Bank Hofman or neither?

9 THE WITNESS: He told me he wanted to buy it at the
10 Bank Hofman because that is where he had most of his funds.

11 THE COURT: He told you?

12 THE WITNESS: He wanted to buy it at the Bank
13 Hofmann.

14 THE COURT: Forgive me.

15 MR. GOULD: Your Honor, will recall the testimony
16 about the nature of Bank Hoffman.

17 THE COURT: Go ahead, I am sorry.

18 As long as we have had this interruption, would
19 you brook a further one for the afternoon recess?

20 MR. GOULD: Very well, your Honor.

21 THE COURT: We will take a ten-minute recess,
22 ladies and gentlemen.

23 (Jury left the courtroom.)

24 (Recess.)

25

1 gawe

Jerome Allen-direct 2426

2 Q Mr. Allen, did there come a time when you learned
3 whether Bonavia had actually purchased the Training With
4 the Pros stock?

5 Just yes or no?

6 A Yes, sir.

7 Q Did you learn from Mr. Bonavia?

8 A Yes, sir.

9 Q When and where did that take place?

10 A By telephone, sir.

11 Q When?

12 A I would say late -- in the middle of March, late
13 March, '69. Perhaps the beginning of April. I think it was
14 March.

15 Q He called you or you called him?

16 A We were in constant communication.

17 Q What was the conversation on this subject?

18 A He said he had bought the stock and that he had --
19 after he received the confirmation from the bank he had
20 given them a series of what is known as open sell order at
21 higher levels, like a thousand to sell at 60, a thousand at
22 61 or maybe 100 at each level.

23 I don't remember the exact sequence of sale
24 prices.

25 Q Do you remember Mr. Bonavia coming to your office

1 gawe Jerome Allen-direct 2427

2 sometime in the spring of 1969 preliminary to a visit of
3 Training with the Pros?

4 A Yes, sir.

5 Q When was that? Give us the best time you can on
6 that.

7 A After he bought the stock, a few months later he
8 came to our office. I don't know how much later, sir. He went
9 with me to see the company.

10 Q Was it still in the spring of '69?

11 A I would say April, but again it's five years
12 ago. I can't remember the exact month.

13 Q Do you remember any part of the conversation with
14 him at that time?

15 A Well, he was very anxious to find out --

16 Q What he said. You have to tell us what he said.

17 A He said he wanted to find out if that McGraw
18 Hill contract was going to materialize and he wanted to
19 see firsthand what he bought.

20 Q Do you know the name of Mr. Bonavia's son?

21 A He, has two, one is Tom and the other goes to law
22 school. I can't remember his name, sir.

23 Q Did Bonavia have a conversation with you about
24 either of his sons?

25 A Yes, sir, with me and Mr. Moss he wanted to get

1 gawe Jerome Allen-direct 2428

2 a franchise --

3 MR. SORKIN: Your Honor, I object. I don't see
4 the relevance of franchise or his sons --

5 THE COURT: A little bit about the sons came out
6 when Mr. Bonavia was here, as I recall it. I think I will
7 allow it.

8 Go ahead.

9 Q What was it all about?

10 A Bud Moss told Joe Bonavia that they were going --

11 MR. SORKIN: Who did? I'm sorry.

12 A Bud Moss told Bonavia -- I was sitting there.

13 He told Bonavia that they intended franchising the education-
14 al system in Chicago, Dallas, Frisco and Joe said his son
15 would be interested in running a school. vocational school
16 with a Training for the Pros franchise, what would be the
17 price of the franchise?

18 And Bud said, "We don't know. We are still con-
19 templating legally where we can do this."

20 Q Let us for the moment go to another matter, Mr.
21 Allen.

22 During the period from the beginning of January
23 1969 until, let us say, June of 1969, did you discuss Training
24 With the Pros with any brokers?

25 A With a few, just a few.

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Jerome Allen-direct

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Q Do you remember with whom you discussed it?

A Well, a lot of them used to call our office.

Q Who?

A A lot of brokers would call our office as a normal course of business. I spoke to Eleanor Wein. That's the name that rings a bell. I know her quite well.

I may have spoken to a Walter Paruch. They were friends and I knew them both. They had handled my commodity account for years, but not many others. I think that Hyman called us a few times. I recall speaking to Eleanor Wein on Training --

MR. SORKIN: May we have whether he called them or they called him? I may have missed that.

A Nat --

MR. GOULD: I'm going to ask some more questions about it.

Q Let's take Mrs. Wein, Eleanor Wein.

How long had you known her before 1969?

A Oh, at least four, five years.

Q What kind of relationship did you have?

A She serviced my commodity account at Hirsch and Company and then she also bought and sold stock beside commodities.

In a very nice way she would pick my brain for

1 gawe Jerome Allen -direct 2430

2 ideas and I would sort of ask her for information.

3 Q In other words, you had an account with her.

4 A Yes, I did at one time.

5 Q You had a commodity account with her?

6 A Yes, sir.

7 Q And you had a securities account with her?

8 A That's right, sir.

9 Q She was your broker?

10 A And friends of mine, yes, sir.

11 Q But she was your broker, you paid her commissions,
12 didn't you, for trades?

13 A Yes, sir.

14 Q She didn't do any free trades?

15 MR. SORKIN: Objection as to form, your Honor.

16 THE COURT: It is already out, Mr. Sorkin.

17 MR. SORKIN: I don't want to interrupt Mr.

18 Gould anymore than I already have. I am sorry.

19 MR. GOULD: I don't know what it is I did that is
20 so heinous.

21 THE COURT: I'm going to let the record stay. If
22 you wish to object, you may without fear of being accused
23 of interruption. Please interrupt before the answer is out
24 because by that time it is a little late.

25 Q Mr. Allen, when you see that Mr. Sorkin is rising

1 gawe Jerome Allen-direct 2431

2 to his feet, please don't answer. Give him a chance to
3 express his objections to my questions. Would you try to
4 honor that rule.

5 Now, sir, this Mr. Paruch, he was at the same
6 brokerage firm as Mrs. Wein, wasn't he?

7 THE COURT: They were usually at the same brokerage
8 firms, yes.

9 Q As I understand it, in addition to her being a
10 broker for you in commodities and securities, she was also
11 friendly with you, personal friends?

12 A Yes, sir.

13 Q Did you from time to time communicate your views
14 on certain securities to her?

15 A Yes, sir.

16 Q This happened a number of times in the years pre-
17 ceding 1969?

18 A Yes, sir.

19 Q Did you from time to time get suggestions from
20 her?

21 A Yes, sir.

22 Q Do you remember speaking with her about Training
23 With the Pros?

24 A Yes, sir.

25 Q Was that a telephone conversation.

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Jerome Allen-direct 2433

Did you ever have such a conversation with him?

A He told me he opened one at the suggestion --

Q Just yes or no.

A No, Dr. Wirth opened an account -- he told me he opened one through a Dr. Walter Wirth.

MR. SORKIN: Where and when, your Honor.

MR. GOULD: I'm about to do that.

MR. SORKIN: I don't think that was the question, Mr. Gould.

MR. GOULD: You just must have a little confidence in my professionalism.

MR. SORKIN: I do.

MR. GOULD: I do want to avoid this kind of thing.

THE COURT: Let's go back to the main track.

MR. GOULD: Excuse me, your Honor.

Q Mr. Allen, please wait for a question and give me a chance to ask you a question. Don't volunteer things.

Did there come a time when you did have a conversation with Mr. Bonavia about his opening a secret Swiss bank account?

A Yes, sir.

Q When did you have that conversation?

A When I was at Rubin, Rose and Company in 1961 or '62.

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Jerome Allen-direct

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2 Q Who else, if anybody, was present.

3 A Dr. Walter Wirth who worked for me. He's a
4 Swiss citizen.

5 Q What was the substance of the conversation?

6 A Dr. Walter Wirth was a researcher with a Ph.D
7 in economics. He met Joe Bonavia at Rubin, Rose and said --
8 and Joe was intrigued with meeting somebody in Switzerland
9 with a banking background.

10 Joe said he wanted a secre account, a coded
11 account at a Swiss bank, could Dr. Wirth arrange this.
12 Dr. Wirth said he could. At the time Dr. Wirth was executing
13 orders for foreign banks, and Mr. Bonavia said he wanted
14 a coded account so he wouldn't get into trouble like his
15 former partner who went to jail on income tax evasion.

16 Q You heard him say that?

17 A Yes, sir.

18 Q Does that exhaust your recollection about the
19 conversation back in 1962?

20 A Well, Dr. Wirth said he would get the appropriate
21 papers or direct Mr. Bonavia where to get the papers.

22 Q Did you or, to your knowledge, Mr. Stoller have
23 anything whatever to do with the opening of that secret
24 coded account?

25 A No, sir, I never saw the paper and I wasn't there

1 gawe

Jerome Allen-direct 2435

2 when he opened the account.

3 Q Did you have anything at all to do with it?

4 A No, sir.

5 Q Now, sir, does the name Barbin mean anything to
6 you?

7 A Yes, sir.

8 Q It has been testified in this case, Mr. Allen,
9 that you suggested to Mr. Bonavia that he open an account
10 to be called Barbin.

11 Did you ever make any suggestion to him?

12 A He gave me the name Barbin. He told me the
13 name of the account.

14 Q When was that?

15 A That account was opened, I would say in '64, '65.

16 Q When for the first time did you hear about it?

17 A In about '66 or '67 because he introduced me to
18 somebody he identified as Barbara, really Barbin.

19 Q Tell us what you mean by that. He introduced you
20 to whom?

21 A I went to a resort in the Midwest, I believe it
22 was called the Wagon Wheel. Joe introduced me to a manicurist.
23 He sort of winked and said, "This is where I got the name
24 Barbin."

25 Her name was Barbara.

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A No, sir. He gave me -- he told me the name he would use or had used.

Q Mr. Allen, there has been testimony in this case that in 1968 you put some pressure on Mr. Bonavia to lend \$65,000 to you and Mr. Stoller.

Did you ever have a conversation with Mr. Bonavia
about lending you and Mr. Stoller \$65,000?

A No, sir.

Q Did you and Mr. Stoller at any time receive \$65,000 from him?

A No, sir.

Q There has been testimony in this case by Mr. Bonavia that he was unable to get statements or confirmations on either of his accounts at the bank Hoffman starting in 1968.

Do you know anything about that?

A I'm sorry, sir. He said he could not receive confirmations?

Q That's what he said, sir.

A No, I gave him confirmation slips.

'They were mailed to him. Some I brought him in

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Jerome Allen-direct

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person, sometimes he picked them up in New York.

Q Did there come a time when you visited Mr.
Bonavia's home?

A On a number of occasions, sir, yes.

Q Where did he live?

A Split level home on Birch Avenue, Rockford. It
is on the outskirts of Rockford.

Q When you visited his home, did you have conver-
sations with him about his Swiss accounts?

A Yes, sir.

Q When you had the conversations, did you see any
statements or confirmations from the Bank Hofmann?

A Yes, sir, I did.

Q Did this take place in the year 1968?

A It took place virtually every year I knew him.

Q Until when?

A Until '70 or '71.

Q Did Mr. Bonavia ever talk with you about the fact that the bank sent him his statements, that is the Bank Hofmann sent him his statements?

A He told me when he wanted certain confirmations they would mail them. If he wanted them not to be known to anybody else, he would have them hold them for him.

Q When and where did you have that conversation?

A In my office, in his office, in his bowling alleys.

Q Was anybody else present?

A Yes. He had some what I would call silent partners in the bowling alley who were there.

MR. SORKIN: Can we have the names of these silent partners?

THE WITNESS: One was named Stuart Olson.

MR. GOULD: What was the question that was put to him?

MR. SORKIN: He went ahead and volunteered there were silent partners.

MR. GOULD: So what?

1 gab-2

Jerome Allen-direct

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MR. SORKIN: I thought we would find out --

3

THE COURT: Why don't you save that until cross.

4

Let's go ahead.

5

Q What were the names of these fellows?

6

A Joe said they were silent partners. I have no

7

firsthand knowledge.

8

Q The names?

9

A Stu Olson and Harvey Ballard or Barlow.

10

Q Mr.Allen, let me show you this piece of paper

11

which has been marked as Government Exhibit 58A. Did

12

you ever see that before?

13

A That is Joe's account or a facsimile sheet.

14

Q When you say that, you mean this number 4318

15

tells you something?

16

A That's the account that Joe had at Bank Hofmann.

17

Q What was the name of that account, do you remember?

18

A That was Barbin.

19

Q I see. Did you ever see this paper?

20

A Yes, I did.

21

Q Where and when?

22

A After he paid Phil and myself part of his

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profits on Franklin Mint.

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Q I see. Looking at this paper, did he show this

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to you?

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A Yes, to confirm how much money he was going to give us for his 10 per cent profits in Franklin Mint.

Q He showed you the paper?

A To establish how much he made.

Q All right. I direct your attention to the fact that this paper shows that on July 18, 1968, the Bank Hofmann paid you out of Bonavia's secret account, Barbin, #4318, the sum of \$32,500, correct?

A Yes, sir.

Q You see that?

A Yes, sir.

Q And paid an equivalent amount to Mr. Allen?

A Mr. Stoller.

Q Mr. Stoller, rather. Excuse me.

A Yes.

Q You see that?

A Yes, sir.

Q Did you in fact receive \$32,000 from the Bank Hofmann?

A Yes, that was 5 per cent of the 10 per cent he made on the Franklin Mint. He made about \$600,000 on Franklin Mint.

Q You got 5 per cent or \$32,500 and Stoller got the same amount, right?

1 gab-4 Jerome Allen-direct 2441
2 A And we insisted that the record show who received
3 it, Stoller and Allen, for anyone to see.

4 Q These entries above that, do you know what they
5 represent?

6 Do you see these entries?

7 A They -- no, I don't, sir.

8 Q Just that, just these two, the ones on July 18.

9 A Yes, sir.

10 Q All right. Now, sir, did you get the money, the
11 \$32,000 from the Bank Hofmann?

12 A Yes, I did.

13 Q How did you get it?

14 A I had that money deposited in my account.

15 Q In the Bank Hofmann?

16 A Yes, sir.

17 Q Do you know what Mr. Stoller did with his?

18 A No, sir.

19 Q It has been testified in this case, sir, that
20 you and Mr. Stoller together told Bonavia in the fall of 1968
21 that you were going to promote the stock of Training With
22 the Pros, run it to 100, split it and then run it to 100
23 again.

24 Did you ever have such a conversation with
25 Bonavia?

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A No, sir.

Q Did you ever hear Mr. Stoller say anything like that to Bonavia?

A He would laugh us out of the office.

Q Did you ever hear anybody say that to Bonavia?

A No, sir.

Q It has been testified by Mr. Bonavia in this case, Mr. Allen, that he was informed that Training With the Pros had a \$25 million contract with McGraw-Hill.

Did you ever hear anything like that said to him?

A No, sir.

Q Did you ever say it to him?

A No, sir.

Q Did you ever hear Stoller say it to him?

A No, sir.

Q Did you at any time at all prior to the date of the public offering of Training With the Pros, that is February 4, 1969 -- did you ever mention the subject of Training With the Pros to Bonavia?

A I don't remember it, no, sir.

Q Did there ever come a time, sir, when you and Stoller took Bonavia to D'Onofrio's office?

A What time period are you talking about, sir?

Q At any time in January, December of '68 or

1 January 1969.

2 A No, sir. I think we brought him there when he
3 wanted the franchise in April.

4 Q When?

5 A In March or April when he wanted the franchise
6 for his son.

7 Q To D'Onofrio's office?

8 A We may have.

9 Q But is it your testimony that you never had any
10 conversation with Bonavia about Training With the Pros until
11 after the stock was publicly offered?

12 A I don't recall any, sir.

13 Q Is it your testimony that you never had any
14 meetings with Bonavia about Training With the Pros before
15 it was publicly offered?

16 A I don't recall any.

17 Q It has been testified here, sir, that in January
18 1969 you told Bonavia that Stoller planned to put the Training
19 With the Pros stock into his, Bonavia's, account despite
20 Bonavia's contrary instructions.

21 Did you ever have such a conversation with
22 Bonavia?

23 A No, sir.

24 Q Did you ever hear at any time Mr. Stoller say
25

1 that he was going to put Training With the Pros in Bonavia's
2 account?
3

4 A No, sir.

5 Q There has been testimony in this case, Mr. Allen,
6 that in early March 1969 there was a conversation in
7 which you and Mr. Stoller participated in which Stoller insisted
8 that Training With the Pros had obtained a \$25 million con-
9 tract and that therefore Bonavia should buy the stock.

10 Did you ever participate in such a conversation?

11 A No, sir.

12 Q It has been testified here, sir, that in March
13 1969 Stoller said that he, Stoller, would have Moss removed
14 as president of Training With the Pros because Moss denied
15 that there was a \$25 million contract.

16 Did you ever hear anything like that?

17 A No, sir.

18 Q Bonavia has testified in this case, Mr. Allen,
19 that in May 1969 you told him that the Training With the Pros
20 stock had been put into his account regardless of anything
21 that Stoller or Herbert may have said and that you, Allen,
22 thought that Bonavia should get -- I will start over again.
23 I withdraw what I said.

24 It has been testified here in this case that in
25 May 1969 you, Allen, told Bonavia that the Training with

the Pros stock had, in fact, been put into Bonavia's account, that is, regardless of anything he heard from Stoller or Herbert.

Did you ever have such a conversation with him?

A I never said that, no, sir.

Q Did you ever tell him that therefore he should go get himself a lawyer in Switzerland and sue the bank?

A No, sir.

Q Mr. Bonavia has testified in this case that in late 1969 or early 1970 in a meeting which Mr. Stoller and yourself and D'Onofrio were present, D'Onofrio admitted that you fellows had done a bad thing in placing the Training With the Pros stock in Bonavia's account.

Did you ever participate in a conversation like that?

A No, sir.

Q Did you ever hear anybody say anything like that?

A No, sir. It couldn't be said --

Q The answer is no, is that right?

A No, sir.

Q Now, did you ever participate in such a conversation with Stoller, D'Onofrio and Bonavia in which D'Onofrio promised Bonavia that he would make up his loss by giving him 100,000 unregistered shares of Training With the Pros free?

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Did you ever hear anything like that?

A No, sir.

Q Did you ever hear any conversation about giving him free stock?

A No, sir.

Q It has been testified here, Mr. Allen, that in March 1971 Bonavia told you and Stoller that he had seen a lawyer concerning the Training With the Pros transactions and that you and Stoller said, we don't want trouble, we will ask you for sell orders and sell 10,000 shares at a time even if we have to buy it ourselves until you have all your money back.

Did you ever have such a conversation?

A No, sir.

Q Did you ever hear anybody have such a conversation?

A No, sir.

Q Did you, in fact, get sell orders from Bonavia and sell 10,000 shares at a time?

A I never had any sell orders.

Q Someone in this case has testified that in late 1971 or early 1972, you and Stoller met in your apartment and that Stoller said he would kill D'Onofrio and then commit suicide because D'Onofrio had talked to the United

2 States Attorney.

3 Did you ever hear a conversation like that?

4 A No, sir.

5 Q Now, Mr. Allen, do you know a gentleman named
6 Feeney?

7 A James Feeney, yes, sir.

8 Q James Feeney?

9 A Yes, sir.

10 Q Do you know him?

11 A Yes, sir.

12 Q Did you ever participate in a meeting with James
13 Feeney at your office on East 60th Street with Mr. Stoller
14 and D'Onofrio to discuss plans for dealing with the price
15 of Training With the Pros?

16 A No, sir.

17 Q In the fall of 1973, did you stay at the Nova
18 Park Hotel in Zurich?

19 A In November and December '73, yes, sir.

20 Q You were there, right?

21 A Yes, sir.

22 Q At that time did Mr. Stoller come over there?

23 A In November, sir, yes.

24 Q In November?

25 A Yes, sir.

2 Q Was Mr. Feeney there?

3 A On one occasion, perhaps two. Yes, he was there.

4 Q At that time did you have a conversation in
5 Feeney's presence in which you said that you would not go
6 back to the United States, that you would become a fugitive
7 and that Stoller would help you by lending you money?

8 A No, sir.

9 Q Was there a conversation at which you and Mr.
10 Stoller met with Feeney at the Nova Park Hotel?

11 A We had a conversation but not on being a fugitive.

12 Q What was the conversation about?

13 A Feeney wanted an introduction to the chief --
14 MR. SORKIN: Can we find out who is talking?

15 THE WITNESS: Jimmy Feeney asked me in Phil's
16 presence if I would introduce Mr. Feeney to Mr. Haueter, the
17 chief commodity trader at the Swiss Bank Corporation because
18 Jim was trying to sell some platinum for a Denver group.
19 I arranged a meeting and I brought Feeney to Mr. Haueter,
20 Fritz Haueter, at the Swiss Bank Corporation.

21 Jim said, "I can get a block of platinum 99
22 per cent pure. What price would you pay above market?"

23 The deal never worked out. It was to get a
24 percentage of it.

25 Q Did you ever discuss Training With the Pros with

1 Feeney in any way?

2 A No. No, sir.

3 Q Did you ever discuss with Feeney in any way
4 whether you would come back to the United States voluntarily
5 or not?

6 A No, sir.

7 Q Did you ever discuss with Feeney in any way
8 whether Stoller would help you be a fugitive any time,
9 any place, anywhere?

10 A No, sir.

11 Q Now, sir, you have known Mr. D'Onofrio for a
12 long time, I gather, correct?

13 A Yes, sir.

14 Q Did it ever come to your attention that D'Onofrio
15 had a Swiss bank account?

16 A Yes, sir.

17 Q When for the first time?

18 A I would say around '67, the latter part of '67.

19 Q Did you ever give Mr. D'Onofrio or did Mr. Stoller
20 in your presence ever give Mr. D'Onofrio the forms for opening
21 an account at the Bank Hofmann?

22 A No, sir. We never had the forms.

23 Q Did there ever come a time when you and Stoller
24 said to D'Onofrio here are the forms for a Swiss bank account?
25

2 A No, sir.

3 Q Did you ever participate in a conversation with
4 Mr.D'Onofrio and Mr.Stoller in which Stoller explained
5 to D'Onofrio the advantages of a Swiss Bank account?

6 A No, sir.

7 Q Did you ever hear Phil Stoller say to D'Onofrio
8 that the advantages of the account will be secret, it will
9 be a coded account, there is no way they can break that
10 veil of secrecy, it has a dual benefit for taxes, you don't
11 have to worry about your income taxes? Did you ever hear any
12 conversation like that --

13 A No, sir.

14 Q -- between D'Onofrio and Stoller?

15 A No, sir.

16 Q Did you go to Switzerland in June 1968, Mr.Allen?

17 A No, sir.

18 Q Were you at the Hotel Baur au Lac in Switzerland
19 on or about June 8, 9 or 10, 1968?

20 A No, sir, I didn't have permission to go then.

21 Q Is it your testimony, sir, that you were not
22 in Switzerland at all during the month of June 1968?

23 A No,sir. I applied to the court for permission
24 to go in the latter part of July.

25 Q So you were not there you say in June?

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2 A No, sir.

3 Q Then it is not so, is it, that you attended a
4 meeting at the Baur au Lack with Mr. Stoller, Mr. Hollister,
5 a woman named Britt, Mr. D'Onofrio and a fellow named Joe
6 Pfingst?

7 A No, sir, I saw them off at the airport. I know
8 Britt quite well.

9 Q You saw them all off at the airport?

10 A Yes, sir.

11 Q You weren't at any meeting?

12 A I didn't have permission to go.

13 Q I see. Did you say at any meeting with D'Onofrio
14 and Pfingst, either in Zurich or at the airport or any
15 place else, that you didn't like the name Training With the
16 Pros, in the name there is 50 points?

17 A No, sir.

18 Q Did you ever participate in a conversation in
19 which you tried to persuade Mr. Stoller to accept Mr. Pfingst
20 as a partner in the Training With the Pros deal?

21 A No, sir.

22 Q Were you a partner with Pfingst or D'Onofrio --
23 or either of them or both of them in any way in Training
24 With the Pros?

25 A No, sir.

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Q Did you have any arrangement with either of them about Training With the Pros?

A No, sir.

Q Do you know of any arrangement that Stoller had with any of them about Training With the Pros?

A No, sir.

Q Now, sir, there has been testimony in this case that in September 1968 you attended a meeting at the offices of the defendant, Martin Frank, who sits here, at which there was some conversation about how the Training With the Pros deal would be done.

Did you ever attend such a meeting with Mr. Frank?

A I had meetings with Mr. Frank, but not on Training With the Pros, no, sir.

End 3B

1 Q This is supposed to have taken place in
2 September 1968. Had you ever heard of Training With the
3 Pros?

4 MR. SORKIN: I think the testimony is there
5 were two meetings, one in September and one in November.
6 The testimony was the deal was discussed --

7 MR. GOULD: I am talking about the September meet-
8 ing. Why always this assumption that I am getting senile or
9 something? I am talking about the September meeting, Mr.
10 Sorkin. Let's go back to the September meeting.

11 Q Did you ever talk or even know about Training
12 With the Pros in September 1968?

13 A No.

14 Q Had you ever heard the name at that time?

15 A No.

16 Q Did you ever hear at a meeting in September
17 1968 -- I emphasize September 1968 -- did you ever hear anybody
18 say you or Stoller or anybody say in that meeting that the
19 deal would be the same as the last one and after a price
20 rise the stock would be "blown off" to Bonavia and Weissinger?
21 Did you ever hear anything like that in September 1968?

22 A No, sir.

23 Q Did you ever hear anything like that at any time?

24 A No, sir.
25

1 Q There has been testimony in this case that in
2 June or July of 1968 at a meeting in Mr. Frank's office,
3 Mr. Frank spoke about having destroyed the indication letter
4 from the Bank Hofmann, that is Government Exhibit 4, which
5 I showed you earlier, October 17, 1968. That has been
6 testified to in this case.

7
8 Did you ever have a conversation or participate
9 in a conversation in which Martin Frank said anything about
10 destroying such a letter?

11 A I don't remember, no, sir.

12 Q Did you ever hear anybody say anything about
13 destroying such a letter?

14 A No, sir.

15 MR. GOULD: Could we have a word with your
16 Honor before I go further on this examination so that I can
17 understand what it is we are going to do?

18 THE COURT: So you can what?

19 MR. GOULD: So I can understand better what I
20 have to do with respect to this subject.

21 THE COURT: Do you want an offer of proof?

22 MR. GOULD: Just one minute at the side bar.

23 THE COURT: All right.

24 (At the side bar.)

25 MR. GOULD: I am sorry, your Honor, I know you

2 don't like these side bar conferences and neither do I.
3 You will recall before we recessed at noon today, there
4 was to be an effort made to get a stipulation about this lady's
5 testimony, Marilyn Herzfeld, and there seems to be a great
6 deal of bickering.

7 If we are going to get the stipulation I don't
8 have to pursue this subject, it becomes academic in the case.

9 If we are not going to get the stipulation
10 then I have to go forward with it.

11 So I thought maybe it would help everybody and
12 save a little time if we could reach some understanding now.

13 The stipulation I would like to get without any
14 frills is simply this: If Marilyn Herzfeld were recalled
15 she would testify that she destroyed the indication letter on
16 her own initiative and volition in 1972, and that nobody
17 connected with this case, Mr. Frank, Mr. Stoller, nobody, or
18 Allen, had anything to do with the destruction of the letter.

19 If I get that stipulation we save ourselves
20 a lot of time. I think it is a perfectly fair stipulation
21 to ask in view of what Mr. Sorkin said.

22 MR. SORKIN: We are going to stipulate to it.
23 Mr. Flannery tells me it is just a question of the wording
24 now, but we will not have to call Miss Herzfeld. We will
25 stipulate. I don't think this is a proper time. He is

1 still on direct.

2 I know Mr. Gould wants to get it in now.

3 MR. GOULD: Sure.

4 MR. SORKIN: After Mr. Allen is through we can
5 stipulate. We haven't agreed on the wording.

6 THE COURT: You have no stipulation.

7 MR. GOULD: I thought maybe if we interrupted
8 your Honor could help us reach the stipulation, but apparently
9 we can't. That is fine with me.

10 THE COURT: Am I to understand that you want to
11 ask this man about that business? What can he say?

12 MR. GOULD: I would have to call her.

13 MR. SORKIN: You don't have to call her.

14 MR. GOULD: I don't know that.

15 THE COURT: Are we to understand that other than
16 going into this you are finished?

17 MR. GOULD: I can be finished in half an hour
18 more. I couldn't finish this afternoon. If you want to
19 recess now --

20 THE COURT: No, go ahead.

21 MR. GOULD: Shall I go forward?

22 THE COURT: Yes, go ahead.

23 (In open court.)

24 Q Mr. Allen, did you at any time since October 1968
25

1 have a conversation with Miss Herzfeld or anybody else
2 about the destruction of any documents relating to Training
3 With the Pros?

4 A I haven't seen her for years, Mr. Gould.

5 Q Have you at any time since October 1968 heard any-
6 body else discuss this subject?

7 A You mean destroying records?

8 Q That's right.

9 A No, sir.

10 Q Specifically in Mr. Frank's office or elsewhere.

11 A No, sir.

12 Q Now, sir, there has been testimony in this case
13 about a meeting at Frank's office in November 1968 in which
14 Mr. Frank is alleged to have heard about the indication letter,
15 Government Exhibit 4, the letter of October 12, 1968, and
16 that Mr. Frank when he heard about it exploded with anger.

17 Did you ever see anything like that?

18 A No, sir.

19 Q Did you ever participate in such a meeting?

20 A No, sir.

21 Q It has been claimed in this case, sir, by a
22 witness that Frank said at that meeting that the deal should
23 have been done in a different way through the use of
24 nominees, or the deal should be done in a different way
25

1 through the use of nominees and that he, Frank, wanted
2 \$15,000 plus 1000 shares. Did anything like that
3 take place?
4

5 A No, sir.

6 Q There has been testimony, sir, in this case about
7 a meeting in mid-December of 1968, at the Camelot Restaurant
8 in which it is said you and Mr. Stoller met with D'Onofrio
9 and discussed the problems of getting nominees.

10 A At what time, sir?

11 Q This is mid-December 1968, and the place is the
12 Camelot Restaurant.

13 A I was at the Americana Hotel, I believe, in
14 December '68.

15 Q It is said, it has been said here, it has been
16 told to his Honor.

17 A The answer is no.

18 Q You never attended such a meeting, is that right?

19 A No, sir.

20 Q It has been alleged in this case, sir, that there
21 was a meeting at Mr. Frank's office in February 1969, in which
22 Mr. D'Onofrio claims to have said that the signatures on your
23 stock certificates were no good. Did you ever attend such a
24 meeting?

25 A No, sir.

1 qb- 7
2 Q Did you ever hear such conversation?

3 A No, sir.

End 4A 4 Q Did you ever attend the meeting at Mr. Frank's
5 office on about February 2, 1969, at which Mr. Stoller and
6 Mr. D'Onofrio were present at which Mr. Frank is alleged to
7 have said that 85 stockholders are not enough and that there
8 should be over 100 stockholders so that it will look like
9 a genuine public offering? Did you ever hear anything like
10 that?

11 A No, sir.

12 Q It has been testified in this case, sir, that
13 at about the end of March 1969, there was a meeting at
14 your office on East 60th Street in which you participated
15 with D'Onofrio and Stoller in which, it has been alleged,
16 you and Stoller said that it is time to cross the stock of
17 Training With the Pros to Bonavia and Weissinger.

18 Did you ever participate in such a meeting?

19 A No, sir.

20 Q Did you ever have any conversation with anybody
21 on crossing the stock of Training With the Pros to Bonavia and
22 Weissinger?

23 A No, sir.

24 Q Do you know what it means to cross the stock to
25 them?

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A Yes.

Q What does it mean?

A A cross is where a man owns a block of stock and will sell it to somebody who wants to buy it and the stock changes hands at a predetermined price normally.

Q And off the Stock Exchange as a rule when we are talking --

A It may be recorded on the ticker or it may not be, but it is usually an off board transaction.

Q Does that phrase "cross the stock" have any meaning at all with respect to Training With the Pros?

A No, s ir.

Q Is there any interpretation that you can give it that has a meaning?

A Not with Training, no, sir.

Q Now, sir, there has been testimony here that in March or early April there was a meeting held at Frank's office at which there was a discussion of a problem regarding notarization of the bills of sale. Did you attend any such meeting?

A No, sir.

Q Do you know anything about such a meeting?

A No, sir.

Q You told us before that there was a problem

1 qb-9
2 with notarizing the bill of sale.

3 A That was between the bank and myself, the back
4 office of the bank and myself, where they instructed me
5 to prepare a new set of bills of sale. This was a telephone
6 conversation.

7 Q And did Mr. Frank have anything to do with that?

8 A No, sir, except I sent people to his office to
9 have them notarized.

10 Q Did Stoller have anything to do with that?

11 A No, sir, I don't think his documents had to be
12 notarized because he was over at the bank.

13 Q I see. So far as you were concerned the problem
14 of notarization related to you, your wife and the other
15 three nominees?

16 A Yes, sir.

17 Q And the bank wanted notarized bills of sale?

18 A Yes, sir.

19 Q That is all you knew about it?

20 A Yes, sir.

21 Q In April 1969 did you have a meeting with D'Onofrio
22 and Stoller at which you discussed touting the stock?

23 A No, sir.

24 Q The stock of Training With the Pros?

25 A No, sir.

1 qb-10 Jerome Allen-direct 2461
2 Q Wasn't there a meeting at which you, Jerome
3 Allen, promised to talk to a broker named Brad Thurlow?

4 A I don't think Brad even, to this day, knows what
5 the stock is.

6 Q Who is Brad Thurlow?

7 A He used to write a column. He is a respected
8 writer. He wrote for Forbes Magazine and was a vice-
9 president of a member firm called Winslow Cohn & Stetson.

10 Q Did you ever discuss Training With the Pros with
11 Brad Thurlow?

12 A No, sir.

13 Q Did you ever tell anybody you discussed it with
14 Brad Thurlow?

15 A Brad basically bought blue chip stocks.

16 Q Now, sir, at this meeting in April 1969, it is
17 supposed to be in your office, do you remember there was a
18 discussion that Stoller should call Elinor Wein to tell
19 her that she better buy Training With the Pros because it
20 would never be at any lower price? Did you ever participate
21 in such a discussion?

22 A No, sir.

23 Q Mr. Allen, did you have a discussion with D'Onofrio
24 in the latter part of April 1969 in which there was reference
25 to a crank letter, which had been sent to the SEC?

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A I heard about a crank letter, but it wasn't through Mr. D'Onofrio.

Q How did you hear about it?

A A broker who worked for a house called Amswiss called me and asked me if I heard a rumor that somebody had written a crank letter to the SEC.

Q Who was the broker who called you?

A I think it was Glen Wu.

Q W-o-o?

A Yes, a Chinese boy. He didn't say he had the letter. He asked me if I heard about such a letter.

Q But you didn't learn about it from D'Onofrio, you say?

A No, sir.

Q Did you attend the meeting in Mr. Frank's office in June or early July 1969 following Mr. Stoller's testimony before the SEC?

A I don't remember any. I was in Marty Frank's office many times on my own indictment, but I don't remember a meeting on Training.

Q It has been testified in this case that you were at a meeting at that time after Mr. Stoller had testified before the SEC and that Mr. Frank blew his top and that Frank said Stoller had perjured himself and that Frank insisted

1
2 that he, Frank, be retained as counsel for Training With
3 the Pros.

4 Did anything like that happen, to your knowledge,
5 or in your presence?

6 A I have heard that said, but it never happened in
7 my presence.

8 Q You have heard it said?

9 A Yes, sir.

10 Q By whom?

11 A By Mr. Sorkin.

12 Q You mean long after the event?

13 A Yes, sir.

14 THE COURT: We will suspend now until tomorrow
15 morning.

16 Ladies and gentlemen, we will begin at 9:30 or
17 at least I hope we will. If counsel will please clear the
18 well as quickly as possible, I have another case to hear.

19 MR. GOULD: Yes, your Honor.

20 THE COURT: Good night, Mrs. DeBartola and ladies
21 and gentlemen.

22 (Adjourned to October 8, 1974, at 9:30 A.M.)
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24
25

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Michael Adams (Resumed)	2243	2243	2247	2341
Joseph Arden	2253	2265		
Melvyn Hiller	2317	2324		
Bruce A. Rich	2344			
Allen Rasher (Resumed)	2364			
Jerome Allen	2381			

EXHIBIT INDEX

<u>Stoller</u>	<u>Identification</u>	<u>In Evidence</u>
AA	2244	2245
<u>Government</u>		
111	2326	
112	2341	
<u>Defendant</u>		
<u>Frank</u>		
Q	2361	2362
R	2377	
O, P		2410

